

## CLASS ACTION SETTLEMENT AGREEMENT

Independence Blue Cross (hereinafter "IBC"), and the representatives of the proposed Settlement Class defined below ("the Class Representatives") hereby agree to a Class Action Settlement ("Settlement") that resolves, in accordance with the terms set forth in this Settlement Agreement and pursuant to Pennsylvania Rule of Civil Procedure 1714, any and all claims against Independence Blue Cross and all other "Released Parties" (as defined herein), arising from or related to payment or reimbursement to Providers (as defined herein), for any and all services, procedures and/or products rendered or provided by such Providers ("Settled Claims" as defined herein), including any and all claims that were brought or could have been brought in the following actions:

1. *John Gregg, M.D. & Vincent DiStefano, M.D., on behalf of themselves and all others similarly situated v. Independence Blue Cross, QCC Insurance Company, Keystone Health Plan East, Inc., AmeriHealth HMO, Inc., and AmeriHealth Inc., Court of Common Pleas, Philadelphia County, December Term, 2000, No. 03482. ("Gregg")*
2. *Robert P. Good, M.D., on behalf of himself and all others similarly situated v. Independence Blue Cross, QCC Insurance Company, Keystone Health Plan East, Inc., AmeriHealth HMO, Inc., and AmeriHealth, Inc., Court of Common Pleas, Philadelphia County, December Term, 2002, No. 0005. ("Good")*
3. *Pennsylvania Orthopaedic Society, on behalf of its members and all other similarly situated individuals v. Independence Blue Cross, QCC Insurance Company, Keystone Health Plan East, Inc., AmeriHealth HMO, Inc., and AmeriHealth, Inc., Court of Common Pleas, Philadelphia County, December Term, 2002, No. 00002. ("Pa Orthopaedic Society")*

The parties have entered this Settlement Agreement in good faith. The parties are not aware of any conflicts of interest which would have any effect on this Settlement. The parties believe in good faith that the terms of this Settlement Agreement are fair, reasonable, adequate and in the best interests of the Class Representatives and members of the Settlement Class.

The parties agree, subject to Final Judicial Approval (as defined herein), compliance with applicable legal requirements and the conditions set forth below, that the Settled Claims are settled, compromised, and released in accordance with the following terms and conditions.

### **I. DEFINITIONS**

**A. Class Counsel.** Class Counsel are David S. Senoff, Esquire, of the law firm Billet & Connor, and Jerome M. Marcus, Esquire, and Jonathan Auerbach, Esquire, of the law firm Berger & Montague.

**B. Class Representatives.** Class Representatives are the representatives of the Settlement Class, as defined in Section II (A) herein. The Class Representatives are John R. Gregg, M.D., Vincent J. DiStefano, M.D., Robert P. Good, M.D., and the Pennsylvania Orthopaedic Society.

**C. Final Judicial Approval.** The term Final Judicial Approval as used herein means a final order of the Court approving the Settlement, including each of the conditions precedent set forth in Section V (D) herein, which either has been affirmed on appeal by the highest court having jurisdiction or, by the lapse of time, is no longer subject to appeal or further appellate review.

**D. Independence Blue Cross.** Independence Blue Cross shall include Independence Blue Cross and all of its present and former predecessors, successors, parents, subsidiaries, affiliates, assigns, joint ventures, principals, officers and directors (in their individual and representative capacities), employees, agents and attorneys, including, but not limited to, QCC Insurance Company, Keystone Health Plan East, AmeriHealth HMO, Inc., AmeriHealth, Inc., AmeriHealth HMO, Inc. New Jersey, and AmeriHealth Insurance Company of New Jersey (collectively “Released Parties”).

**E. Litigation.** Litigation shall mean the *Gregg, Good*, and/or *Pa Orthopaedic Society* actions.

**F. Providers.** Providers include any and all physicians, health care providers, group practices and/or any individual or group that (1) provides, or provided at any time during the period January 1, 1993 to the date of Final Judicial Approval, medical services, procedures and/or products to an individual who has, or had at any time through the date of Final Judicial Approval, health insurance through Independence Blue Cross and/or any Released Party or (2) submitted at any time during the period January 1, 1993 to the date of Final Judicial Approval, a claim for payment or reimbursement for any medical services, procedures and/or products to Independence Blue Cross and/or any Released Party. As used herein, Providers shall also refer to any association of Providers, including any medical or professional association of any kind. The term “Providers” shall not include hospitals.

**G. Settled Claims.** Settled Claims shall include any and all claims against Independence Blue Cross and all other Released Parties arising from or related to payment or reimbursement to Providers for any and all services, procedures and/or products rendered or provided by such Providers, including any and all claims that were brought or could have been brought in the Litigation.

## II. THE SETTLEMENT CLASS

### A. Settlement Class Members

Subject to the approval of the Court of Common Pleas of Philadelphia County and for purposes of settlement only, the parties agree that the following Settlement Class shall be certified. The Settlement Class shall include:

All Providers (1) who submitted claims for payment or reimbursement to Independence Blue Cross and/or any Released Party for medical services, procedures and/or products and (2) who have been, claim to have been, and/or may have been denied payment or reimbursement or have, claim to have, and/or may have received reduced payment or reimbursement on such claims.

The Settlement Class includes, but is not limited to, all claims by Providers for downcoding and/or bundling, however described or characterized.

**B. Settlement Class Non-Members**

The Settlement Class does not include the following:

1. Persons whose claims against Independence Blue Cross or any Released Party were previously resolved by release or otherwise; or
2. Independence Blue Cross or any Released Party.

**C. Opt-Out Rights**

1. The Settlement Class shall be treated as a class under Pennsylvania Rule of Civil Procedure 1711(a) and all Settlement Class Members will be eligible to exercise the right to opt out of this Settlement Agreement.

2. Each Settlement Class Member wishing to exercise the right to opt out of this Settlement Agreement must sign and submit timely written notice to Class Counsel stating the Settlement Class Member's intent to opt out of the settlement in accordance with the procedures set forth at Exhibit "A" to this Settlement Agreement. To be effective, this written notice must be signed and submitted by the expiration of the Opt-Out Period. The Opt-Out Period will continue at least thirty (30) days from the date that IBC certifies that they have complied with the notice requirement of Section V (B) of this Settlement Agreement. Class Counsel shall promptly provide to the Court and counsel for Independence Blue Cross all opt out notices submitted by Settlement Class Members.

3. Any Settlement Class Member who timely and properly exercises an Opt-Out Right may initiate or otherwise pursue any legal claim against IBC or any Released Party without any limitation or defense arising from the terms of the Settlement Agreement and subject to all defenses that IBC and the Released Parties would otherwise have in the absence of this Settlement Agreement.

**III. TERMS OF SETTLEMENT**

**A. Disclosure**

Independence Blue Cross shall disclose to each Provider the standard fee schedules relevant to each Provider's applicable specialties; any definition of any Code on such fee schedule which is not identical to the definition of such Code then currently issued by either: (1) the American Medical Association's Current Procedures Terminology ("CPT"); (2) HCPCS I and II; (3) the relevant speciality's Professional Association Coding manual, or (4) the Centers for Medicare and Medicaid Services' Correct Coding Initiative ("CCI"); and those policies and/or procedures that may impact payment a provider receives for services rendered. The parties will negotiate a mutually agreeable disclosure which will be phased in over time as approved by the Court.

## **B. Processing**

In the four areas defined below, Independence Blue Cross shall process claims in accordance with established standards of either CCI, CPT, coding initiatives of national specialty bodies, or other national professional or governmental authorities. The standards applied by Independence Blue Cross shall be disclosed in accordance with Section III (A) of this Settlement Agreement. To the extent such standards change, Independence Blue Cross reserves the right to adopt or not adopt such changes and will disclose such adoption or non-adoption. To the extent Independence Blue Cross applies different standards than the foregoing, they will be disclosed in accordance with Section III (A) of this Settlement Agreement. The four areas are:

- Independent Procedure being replaced by Separate Procedure designation
- Radiologic guidance during a procedure
- Multiple Surgery reduction
- Specific Modifiers (RT, LT, 25, 50, 51, 59, 62, 66, 80, 81, 82)

Upon preliminary approval of this Settlement, and no later than August 1, 2003, Independence Blue Cross shall implement this Settlement Agreement solely with respect to (1) Independent Procedure being replaced by Separate Procedure designation and (2) the 59 modifier.

All other changes will be phased in over approximately two years, commencing after Final Judicial Approval of the terms of this Settlement, and pursuant to a timeline agreed to by the parties.

## **C. Dispute Resolution**

Independence Blue Cross shall establish a formal dispute resolution process on Provider payment disputes, in accordance with the procedures set forth in Exhibit "B" to this Settlement Agreement, which will be subject to approval by the Court, after which Independence Blue Cross will disclose the process to Providers. This process will apply to Provider payment disputes on claims submitted after Final Judicial Approval and will be phased in over the same two-year period described in Section III (B) above.

## **D. Financial Impact**

The parties will estimate the financial impact of the changes being made in the four areas identified herein over two years, and the reasonableness of the basis for those estimates. IBC's current estimate is \$40,000,000. Class Counsel will take appropriate steps, including obtaining an affidavit(s) or other documents or discovery, to inquire as to the basis and reasonableness of IBC's estimate. All changes will be phased in over the same two-year period described in Section III (B) above, according to a schedule approved by the Court.

#### **E. Duration**

The changes described herein will be continued for a period of two years from the date of Final Judicial Approval, with a phase in over that time period as described in Section III (B) above. The Disclosure and Dispute Resolution described herein will be continued for a period of two years from the date of Final Judicial Approval, with a phase in over that time period as described in §§ III(A) and III(C). IBC shall not be required to continue dispute resolution after two years. IBC shall not be required to continue to provide disclosure after two years to the extent the Court finds that doing so would be inconsistent with IBC's business requirements or any controlling authority or requirement, including administrative, governmental or judicial authorities or requirements. IBC shall notify Providers of its intent to discontinue disclosure or alter or discontinue dispute resolution. Notwithstanding the foregoing, from and after the close of the two year period, the form of IBC's disclosure and dispute resolution, if any, shall be within its sole discretion.

#### **F. Schedule**

Within forty-five (45) days of preliminary approval of this Settlement, Independence Blue Cross shall submit to Class Counsel, and the parties shall agree to, a schedule for the phasing in of the disclosure, processing and dispute resolution agreed to herein. IBC will use its best efforts to meet that schedule. However, that schedule may be revised to the extent required by IBC's business requirements or any controlling authority or requirement, including administrative, governmental or judicial authorities or requirements. In the event a change in schedule is required, the parties shall attempt to mutually agree to such a schedule. If such agreement is not possible, the parties may then seek court intervention with respect thereto.

#### **G. Class Representative Incentive Payments**

Class Representatives John R. Gregg, M.D., Vincent J. DiStefano, M.D., and Robert P. Good, M.D. shall each receive an incentive payment not to exceed \$20,000 each, the amount of such payments to be subject to court review and approval, based upon separate petitions for each such Class Representative. Such payments as approved by the Court will be funded from a reduction in the duration of the phased in changes.

#### **H. Force Majeure**

IBC shall not be liable for any delay or non-performance of its obligations under this § III arising from any act of God, governmental act, act of terrorism, war, fire, flood, explosion or civil commotion. The performance of IBC's obligations under this § III, to the extent affected by the delay, shall be suspended for the period during which the cause persists.

#### **IV. RIGHTS OF INDEPENDENCE BLUE CROSS AND THE RELEASED PARTIES**

##### **A. Dismissal of Claims With Prejudice**

Effective upon Final Judicial Approval as defined above, every Settled Claim against Independence Blue Cross and/or any other Released Party by any and every Settlement Class Member who has not exercised the right to opt out shall be conclusively compromised, settled and released and dismissed with prejudice. As a consequence thereof, any Settlement Class Member who has not exercised the right to opt out shall be bound by this Settlement and forever barred from initiating, asserting or prosecuting any Settled Claim against Independence Blue Cross or any other Released Party. Effective upon Final Judicial Approval, the *Gregg, Good, and Pa Orthopaedic Society* actions shall be dismissed with prejudice.

##### **B. Release and Indemnification**

Upon Final Judicial Approval of this Settlement, the Settlement Class Members, on behalf of themselves and any present and former agents, assigns, successors and assignors, heirs, executors, administrators, trustees, attorneys and/or any other person or entity claiming by or through any of them ("Releasers"), hereby discharge and release IBC and the Released Parties, including any present and former employees, agents, shareholders, officers and directors (in their individual and representative capacities), subsidiaries, predecessors, affiliates, assigns, parent corporations, if any, joint ventures, successors and/or assignors, attorneys, heirs, executors, administrators and/or trustees ("Releasees"), from any and all rights, claims, causes of action, suits, debts, liabilities, losses, damages, actions, judgments, obligations, attorneys' fees, expenses, indemnities, subrogations, duties, demands, controversies or liabilities of every kind and nature whatsoever, however styled, whether at law or in equity, including but not limited to, any and all claims for monetary damages, restitution, unjust enrichment, disgorgement, injunction or arbitration, however styled, whether known or unknown, matured or unmatured, foreseeable or unforeseeable, suspected or unsuspected, fixed or contingent, and whether or not asserted, threatened, or litigated, which the Releasers now have, ever had, or in the future may have individually, representatively or in any other capacity against the Releasees for, upon, or by reason of, any matter, cause or thing whatsoever from the beginning of time to the date of this Agreement, including but not limited to, any and all Settled Claims, and any and all claims arising out of, relating to or in any way connected with the Litigation or that have been asserted or could have been asserted in the Litigation.

Provided, however, that this Release shall not eliminate any Physician's right to be compensated for services performed before the date of Final Judicial Approval for which either (1) a request for reimbursement is pending at the date of Final Judicial Approval or (2) a request for reimbursement has not yet been submitted but may still be submitted timely under the parties' agreements i.e., within 60 days of the date of service. A request for reimbursement is pending if it has been submitted to a Released Party but has not yet been processed. This Release shall not eliminate any physician's right to specifically dispute a particular claim adjudicated within 60 days prior to Final Judicial Approval.

It is the specific intent of the parties to this Settlement Agreement that this Release is intended to include all claims of the Class Representatives and/or the Settlement Class Members,

whether or not the Court has jurisdiction to hear such causes of action. The release of “unknown” claims as used herein includes any claims which the Class Representatives and/or Settlement Class Members do not know or suspect to exist in their favor at the time of the release of IBC and the Released Parties which, if known by them, might have affected their Settlement with and release of IBC and the Released Parties, or might have affected their decision not to object to this Settlement.

The Releasors acknowledge that they may hereafter discover facts in addition to or different from those that are now known or believed to be true with respect to the subject matter of this Settlement Agreement. The Releasors further acknowledge that upon Final Judicial Approval, they will have fully, finally and forever settled and released any and all claims without regard to the subsequent discovery or existence of such different or additional facts.

### **C. Withdrawal Rights**

1. For twenty (20) days following the expiration of the Opt-Out Period, IBC and the Released Parties will have an absolute right, exercisable in their sole discretion, to terminate and withdraw from this Settlement Agreement if more than six percent (6%) of the Settlement Class Members timely and properly opt out of the Settlement. Said percentage will be calculated by (1) the number of Providers as of January 1, 2003, approved by the Released Parties, or (2) the monetary value of claims submitted by such Providers in calendar year 2002. In the event IBC and the Released Parties exercise their right to terminate and withdraw from this Settlement Agreement, the Settlement Agreement shall be null and void and of no effect, and nothing contained herein or occurring in the course of negotiating this Settlement Agreement shall be used for any purpose in any litigation. Further, any certification pursuant to this Settlement Agreement shall be vacated and any action taken pursuant to this Settlement Agreement or otherwise in aid of the proposed settlement shall become void and of no effect.

2. In addition to promptly providing to the Court and counsel for IBC all opt-out notices submitted by Settlement Class Members, Class Counsel shall determine the number of any opt-outs, and advise IBC of the same within five days of the close of the Opt-Out Period, and respond to reasonable requests for non-confidential information relating to the Settlement Class Members who opt out.

## **V. SETTLEMENT APPROVAL AND NOTIFICATION**

### **A. Application for Approval**

After executing this Settlement Agreement, Class Counsel shall move the Court for the entry of an Order granting preliminary approval. The Order sought shall:

1. Preliminarily certify the Settlement Class defined herein for settlement purposes only;
2. Grant approval of this Settlement Agreement in its entirety;
3. Authorize the dissemination of Notice, as described herein;

4. Designate a time period for opting out of the Settlement as set forth herein;
5. Schedule a deadline for filing objections to the Settlement as set forth herein;
6. Schedule a formal fairness hearing, as set forth herein, to review comments concerning this settlement, to consider its fairness, reasonableness and adequacy, and to determine whether to enter an Order approving the Settlement. The fairness hearing shall be scheduled giving sufficient time for notice to be disseminated and to allow for objections, exercise of opt-out rights and exercise of withdrawal rights pursuant to the terms of this Settlement Agreement.

#### **B. Notice**

1. Pursuant to Pennsylvania Rule of Civil Procedure 1712 (c), IBC will disseminate to potential Settlement Class Members notice of the Settlement in the form attached hereto as Exhibit "C," subject to any modifications ordered by the Court, not later than 45 days after the Court's preliminary approval. To the extent possible, IBC will disseminate notice by inclusion of such notice in a normal mailing of IBC to the Settlement Class Members. To the extent IBC does not conduct a normal mailing within the timeframe identified herein, IBC will disseminate notice pursuant to the same process as it would conduct a normal mailing.
2. The notice shall summarize the major terms of the Settlement Agreement, state the time, date and place of the formal fairness hearing, and explain the procedures and deadlines for opting out and submitting written objections.
3. Any and all costs incurred by IBC in disseminating the notice to Settlement Class Members shall be funded by a reduction in the duration of the phased-in changes identified in Section III herein.
4. IBC shall submit a certification to the Court that it has complied with the notice requirements not later than 45 days after the Court's preliminary approval.

#### **C. Objections**

All objections to the Settlement shall be submitted in writing to the Court, Class Counsel and IBC within thirty (30) days from the date that IBC certifies that it has complied with the notice requirement of Section V (B) of this Settlement Agreement. Any objections not so submitted shall be waived. Anyone wishing to appear at the formal fairness hearing to object to the Settlement shall so specify in his or her written objections.

#### **D. Conditions Precedent**

The parties' respective obligations under this Settlement Agreement are subject to the Final Judicial Approval of this Settlement, after a formal fairness hearing, which shall include:

1. Certification of the Settlement Class for settlement purposes only;

2. Approval of this Settlement Agreement in its entirety as fair, reasonable and adequate, and in the best interests of the Settlement Class as a whole;

3. Exhaustion of all appeals (or the expiration of the time for bringing appeals), if any, without modification of this Settlement Agreement;

4. An Order adjudging that all Settlement Class Members, other than those who have excluded themselves, shall be bound by this Settlement and shall be deemed conclusively to have settled and released the Settled Claims against IBC and all of the Released Parties and to have covenanted not to file suit against IBC or any of the Released Parties with respect to any of the Settled Claims.

5. An Order barring and permanently enjoining each Settlement Class Member who does not properly and timely exercise his or her Opt-Out Rights from asserting any and all Settled Claims that the Settlement Class Member had, has, or may have in the future in any court;

6. Dismissal of the Litigation with prejudice; and

7. Reservation of the Court's continuing and exclusive jurisdiction over the parties, including IBC and the Settlement Class Members, to administer, supervise, interpret and enforce this Settlement Agreement in accordance with its terms.

Notwithstanding the foregoing, upon preliminary approval of this Settlement, and no later than August 1, 2003, Independence Blue Cross shall implement this Settlement Agreement solely with respect to (1) Independent Procedure being replaced by Separate Procedure designation and (2) the 59 modifier, as set forth in Section III (B).

In addition, the parties' respective obligations under this Settlement Agreement are subject to agreement by the parties to a joint public statement regarding this Settlement Agreement, as described in Section VII (A) herein, and as attached hereto as Exhibit "D".

## **VI. ATTORNEYS' FEES AND COSTS**

The total amount to be paid for attorneys' fees and costs for all attorneys and/or law firms claiming any right to compensation for any claims being resolved will be capped at \$5 million, and will require submission of separate fee petitions by each Class Counsel, which will be subject to the Court's discretion to approve or reject some or all of the fee petitions in the normal course. The total amount sought in all such petitions shall not exceed \$5 million. Any fees as approved by the Court would be funded by a reduction in the duration of the phased in changes identified in Section III herein. The amount of attorneys' fees shall not be increased even if the total value of this Settlement exceeds the estimate set forth in Section III (D) herein or for any other reason. Payment shall be made upon Final Judicial Approval of the Settlement. Released Parties shall not object to any petition for fees and costs if (1) the total amount sought in all such petitions is equal to or less than \$5 million, and (2) 94% of the Settlement Class Members are bound by this Class Action Settlement Agreement, are deemed conclusively to have settled and released the Settled Claims against IBC, and are barred and permanently enjoined from asserting

any and all Settled Claims that such Settlement Class Members had, has, or may have in the future in any Court.

## VII. OTHER PROVISIONS

**A. Joint Statement.** The parties hereto shall issue a mutually agreeable joint public statement regarding this Settlement Agreement in the form set forth in Exhibit “D” attached hereto. The parties may make additional public statements regarding this Settlement Agreement, the Settled Claims or the Litigation so long as such additional public statements are consistent with the joint public statement attached as Exhibit “D”. Class Counsel shall not use this Settlement Agreement for marketing purposes, including posting on any website, or for any purpose other than as provided for herein.

**B. Representations by Class Counsel.** Class Counsel hereby warrants that neither they nor any of their present partners or associates represent, or intend to represent, any opt-out class member in connection with this litigation or any claim stated therein.

**C. Legal Counsel.** Class Representatives and IBC represent and warrant that they have consulted with the attorneys of their choice concerning this Settlement Agreement and all matters covered by it, that their attorneys have reviewed this Settlement Agreement, that they have been fully advised by their attorneys with respect to their rights, and with respect to the execution of this Settlement Agreement, that they have executed the Settlement Agreement only after securing the advice of their attorneys and that the rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable.

**D. Retention of Rights.** IBC and the Released Parties shall retain all rights with respect to the Litigation including, but not limited to, the right to contest class certification for litigation purposes, should this Settlement not be approved.

**E. Jurisdiction of Court.** The Court of Common Pleas of Philadelphia County, Commerce Program, Trial Division, will have original jurisdiction over all provisions of this Settlement Agreement, including the administration, supervision, interpretation and enforcement of this Settlement Agreement in accordance with its terms and any award of attorneys’ fees.

**F. Entire Agreement.** This Settlement Agreement constitutes the sole, only, entire and complete agreement of the parties relating in any way to the subject matter hereof. No statements, promises, or representations have been made by any party, or are relied upon, and no consideration has been or is offered, promised, expected or held out, other than as stated in this Agreement. There are no oral or written collateral agreements. All prior discussions and negotiations have been, and are, merged or integrated into, and are superseded by, this Settlement Agreement. The terms of this Settlement Agreement may not be modified, except in a writing signed by the parties to be charged and approved by the Court.

**G. Confidentiality.** The parties agree that any and all documents, material and/or information received and/or produced or disclosed in furtherance of this Settlement shall be considered confidential and shall not be disclosed to any third parties. All documents, material and/or information produced or disclosed in furtherance of this Settlement shall be returned to the party or person that produced or disclosed such documents, material and/or information within 30 days of Final Judicial Approval. All documents, material and/or information produced in the Litigation shall be subject to the Stipulations and Orders Governing the Production and Exchange of Confidential Materials in place in the respective actions, with the “conclusion” of the Litigation meaning the date of Final Judicial Approval.

**H. Restricted Use of Settlement Agreement.** The parties are precluded from any use of this Settlement Agreement or any term thereof for any purpose in any other action, including use as evidence, as an admission, or to establish liability or wrongdoing, and the parties shall not seek to introduce the terms of this Settlement Agreement or any statements made in connection with its negotiation, execution or implementation, in any judicial proceeding, except insofar as it is necessary to enforce the terms of the Settlement, and except that the Settlement Agreement may be filed in the Litigation as evidence of the Settlement or in any other action against IBC or the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, or any other theory or claim of issue or claim preclusion or similar defense or counterclaim. This Settlement Agreement, and any statements made in connection with its negotiation, execution or implementation are subject to Pennsylvania Rule of Evidence 408.

**I. No Admission of Liability.** This Settlement is a compromise of disputed claims and is not and shall not be construed as an adjudication or finding on the merits as to the Settled Claims, or an admission by IBC or any other Released Party of any liability or wrongdoing, which is expressly denied, or as an admission by the Class Representatives or members of the Settlement Class defined herein that their claims lack merit. Nor shall anything herein contained constitute an acknowledgement of fact, allegation or claim that has been or could have been made, nor shall any third party derive any benefit whatsoever from the statements made herein. The parties are entering this Settlement Agreement to avoid lengthy, complex and time-consuming litigation.

**J. Applicable Law.** This Settlement Agreement shall be construed in accordance with and be governed by the substantive laws of the Commonwealth of Pennsylvania in effect as of the date of its execution by all parties without regard to its conflicts of law principles.

**K. Paragraph Headings.** Paragraph headings contained in this Settlement Agreement are inserted solely as reference aids for the ease and convenience of the reader; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions or any other aspect of this Settlement Agreement.

**L. Communication.** Any and all pleadings, notices or other communications required to be submitted by one party to another under this Settlement Agreement shall be in writing and delivered personally or sent by express delivery or facsimile as follows:

**To IBC and Released Parties:**

Edward F. Mannino, Esquire  
Akin, Gump, Strauss, Hauer & Feld L.L.P.  
One Commerce Square  
2005 Market Street, Suite 2200  
Philadelphia, PA 19103  
(215) 965-1340 (telephone)  
(215) 965-1210 (facsimile)

with a copy to:

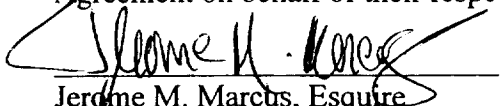
General Counsel  
Independence Blue Cross  
1901 Market Street, 45<sup>th</sup> Floor  
Philadelphia, PA 19103

**To Class Representatives and Settlement Class Members:**

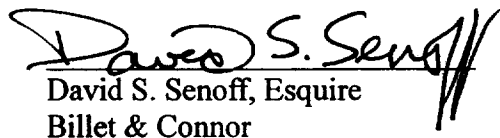
Jerome M. Marcus, Esquire  
Jonathan Auerbach, Esquire  
Berger & Montague, PC  
1622 Locust Street  
Philadelphia, PA 19103  
(215) 875-3013 (telephone)  
(215) 875-4604 (facsimile)

David S. Senoff, Esquire  
Billet & Connor  
2000 Market Street  
Suite 2803  
Philadelphia, PA 19103-3201  
(215) 496-7500 (telephone)  
(215) 496-7505 (facsimile)

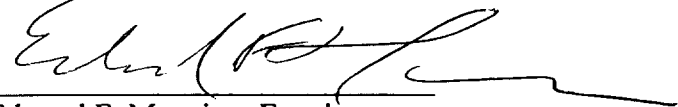
**M. Warranty of Capacity to Execute Agreement.** The undersigned attorneys represent and warrant that they have the authority to execute this Class Action Settlement Agreement on behalf of their respective clients.



Jerome M. Marcus, Esquire  
Jonathan Auerbach, Esquire  
Berger & Montague, PC  
1622 Locust Street  
Philadelphia, PA 19103  
(215) 875-3013 (telephone)  
(215) 875-4604 (facsimile)  
Class Counsel



David S. Senoff, Esquire  
Billet & Connor  
2000 Market Street  
Suite 2803  
Philadelphia, PA 19103-3201  
(215) 496-7500 (telephone)  
(215) 496-7505 (facsimile)  
Class Counsel



Edward F. Mannino, Esquire  
David L. Comerford  
Katherine Menapace  
Attorney I.D. Nos. 04504, 65969 and 80395  
Akin, Gump, Strauss, Hauer & Feld, LLP  
One Commerce Square  
2005 Market Street, Suite 2200  
Philadelphia, PA 19103  
Telephone: (215) 965-1200  
Facsimile: (215) 965-1210

Counsel to Defendants

Dated: June 11, 2003

# **EXHIBIT**

**“A”**

## **CLASS MEMBER OPT OUT PROCEDURE**

If you are a member of the Class and wish to remain in the Class, YOU NEED NOT DO ANYTHING. You are not being sued and you do not need to appear in court. If you do nothing, you will be included in the proposed settlement and be entitled to pursue its benefits, but will be giving up your individual right to pursue any and all claims against Independence Blue Cross, its subsidiaries, affiliates and related entities.

If you do not wish to remain in the Class, or accept the proposed settlement, you can opt out by mailing a letter, postage prepaid, to Class Counsel at the addresses listed below:

Jerome M. Marcus  
Jonathan Auerbach  
Berger & Montague, PC  
1622 Locust Street  
Philadelphia, PA 19103-6365  
**Class Counsel**

and

David S. Senoff, Esquire  
Billet & Connor, P.C.  
2000 Market Street, Suite 2803  
Philadelphia, PA 19103  
**Class Counsel**

Your letter must include the following information:

- Full name
- Current Office Address
- Provider Number
- Telephone Number
- Statement that you wish to be excluded from the class action lawsuits
- Your signature

You must save a copy of the completed letter for your records. **YOUR REQUEST MUST BE POSTMARKED NO LATER THAN AUGUST 1, 2003.**

If you have any questions or concerns regarding this procedure and how it affects your rights you should contact Class Counsel.

# **EXHIBIT**

**“B”**

**INDEPENDENCE BLUE CROSS**  
**PHYSICIAN CLAIM PAYMENT INQUIRY AND APPEAL PROCESS**

The Physician Claim Payment Inquiry process (first level) for resolving physician claim payment disputes is described below.

If a physician does not agree with the outcome of the inquiry process, a Claim Payment Appeal Process (second level), also described below, provides for further and final review.

**PHYSICIAN CLAIM PAYMENT INQUIRY PROCESS:**

The Physician Claim Payment Inquiry process is for HMO, POS and PPO payment issues related to general coding and claims processing issues. The process is initiated by sending the claim form, supporting documentation, and alternative claim payment justification to:

Physician Claims Review (HMO-POS)  
P.O. Box 7930  
Philadelphia, PA 19101-1453

or

Physician Claims Review (PPO)  
P.O. Box 41453  
Philadelphia, PA 19101-1453

Any additional documentation required by IBC for resolution of the Inquiry will be identified to Physician within 30 days of receipt of the Inquiry by IBC. The outcome of this process is a detailed explanation to the physician of what action was taken and the reason for the action. All Inquiries will be adjudicated within 30 days of receiving all information necessary to process the Inquiry, including additional information supplied by the physician.

**PHYSICIAN CLAIM PAYMENT APPEAL PROCESS:**

If a physician does not agree with the determination made through the Physician Claim Payment Inquiry process, a second level appeal may be initiated. This can be done by sending a written letter of appeal, a copy of the written outcome received through the claim inquiry process, alternative claim payment justification and any other supporting documentation the physician feels is necessary to support the appeal to:

Physician Claim Payment Appeal  
P.O. Box XXXXX  
Philadelphia, PA 19101-1453

Any additional documentation required by IBC for resolution of the Appeal will be identified to Physician within 30 days of receipt of the Appeal by IBC. Appeals will be adjudicated to within 30 days of receiving all information necessary to process the Appeal, including additional information supplied by the physician.

# **EXHIBIT**

**“C”**

IN THE COURT OF COMMON PLEAS  
FOR PHILADELPHIA COUNTY

PENNSYLVANIA ORTHOPAEDIC SOCIETY,  
on behalf of its members and all others similarly  
situated individuals,

Plaintiffs

v.

INDEPENDENCE BLUE CROSS, et al.

Defendants.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

DECEMBER TERM, 2002  
NO. 0002

ASSIGNED TO COMMERCE  
PROGRAM

ROBERT P. GOOD, M.D., on behalf of himself  
and all others similarly situated,

Plaintiffs

v.

INDEPENDENCE BLUE CROSS, QCC  
INSURANCE COMPANY, KEYSTONE  
HEALTH PLAN EAST, INC., AMERIHEALTH  
HMO, INC., and AMERIHEALTH, INC.

Defendants.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

DECEMBER TERM, 2002  
NO. 0005

ASSIGNED TO COMMERCE  
PROGRAM

JOHN R. GREGG, M.D.

and

VINCENT J. DISTEFANO, M.D., on behalf of  
themselves and all others similarly situated,

Plaintiffs

v.

INDEPENDENCE BLUE CROSS, QCC  
INSURANCE COMPANY, KEYSTONE  
HEALTH PLAN EAST, INC., AMERIHEALTH  
HMO, INC. and AMERIHEALTH, INC.

Defendants.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

JURY TRIAL DEMANDED

DECEMBER TERM, 2000

NO.: 03482

ASSIGNED TO COMMERCE  
PROGRAM

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**TO: ALL PROVIDERS WHO SUBMITTED CLAIMS FOR REIMBURSEMENT TO INDEPENDENCE BLUE CROSS, QCC INSURANCE COMPANY, KEYSTONE HEALTH PLAN EAST, INC., AMERIHEALTH HMO, INC., AMERIHEALTH, INC., AMERIHEALTH HMO, INC. NEW JERSEY OR AMERIHEALTH INSURANCE COMPANY OF NEW JERSEY (collectively "INDEPENDENCE BLUE CROSS") BETWEEN JANUARY 1, 1993 AND \_\_\_\_\_, 2003.**

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY THE PROPOSED SETTLEMENT OF THIS CLASS ACTION.**

This Notice is given pursuant to Pennsylvania Rule of Civil Procedure 1712(c). The purpose of this Notice is to inform you that a proposed settlement between the Pennsylvania Orthopaedic Society, Provider Class Representatives and Independence Blue Cross, its subsidiaries, affiliates and related entities ("Independence Blue Cross") has been reached.

**NATURE OF THE CLAIMS**

This court has preliminarily approved a Settlement between Independence Blue Cross and a class of all Providers (e.g., all physicians, health care providers, group practices and/or any individual or group) who submitted claims for payment or reimbursement for medical services, procedures and/or products to Independence Blue Cross at any time during the period January 1, 1993 to the date of Final Judicial Approval, and who have been, claim to have been, and/or may have been denied payment or reimbursement or have, claim to have, and/or may have received reduced payment or reimbursement, including but not limited to, all claims for downcoding and/or bundling. The term "Providers" does not include hospitals. This litigation challenged certain Independence Blue Cross policies and procedures in the areas of payment, reimbursement, fee disclosure, claims processing and dispute resolution.

## **RELIEF PROVIDED UNDER THE PROPOSED SETTLEMENT**

As part of this Settlement, Independence Blue Cross has agreed to address providers' concerns, simplify and streamline the reimbursement process for providers, and will result in additional reimbursement to providers, with an estimated financial impact of \$40 million in additional claims payments to providers over the next two years following Final Judicial Approval. Under the agreement, IBC will:

- Disclose to providers the standard fee schedules, and changes in fee schedules, that are applicable to the provider's specialty,
- Disclose policies or procedures that may impact the payment or reimbursement that a provider receives for services rendered,
- Process claims in accordance with established standards in various areas, including multiple surgery, radiologic guidance during a procedure, and certain claim specific modifiers used in billing,
- Replace the independent procedure designation with the separate procedure designation of the Current Procedural Terminology, and
- Establish a formal resolution process for provider payment disputes.

The changes in payment processing and dispute resolution will be continued for a period of two years from the date of Final Judicial Approval, with a phase in over that time period. IBC shall not be required to continue to provide disclosure after two years to the extent the Court finds that doing so would be inconsistent with IBC's business requirements or any controlling authority or requirement, including administrative, governmental or judicial authorities or requirements.

You may access information about the settlement at [www.ibx.com](http://www.ibx.com) or [www.paorthosociety.com](http://www.paorthosociety.com) or use the resources described below. **IF YOU WISH TO PARTICIPATE IN THE PROPOSED SETTLEMENT, YOU ARE NOT REQUIRED TO DO ANYTHING.**

**RELEASE, OPT-OUT PROCEDURE AND EFFECT OF FAILURE TO OPT-OUT**

Class members will have the opportunity to opt-out of the Settlement, to object, or to be heard prior to Final Judicial Approval of this Settlement. Absent taking such actions, **ALL CLASS MEMBERS SHALL BE BOUND BY THE SETTLEMENT AND ALL ORDERS OF THE COURT RELATING TO THE SETTLEMENT. IF THE SETTLEMENT IS APPROVED, YOU SHALL BE DEEMED CONCLUSIVELY TO HAVE SETTLED, RESOLVED AND RELEASED ANY AND ALL CLAIMS YOU MAY HAVE AGAINST INDEPENDENCE BLUE CROSS, TO HAVE COVENANTED NOT TO FILE SUIT AGAINST INDEPENDENCE BLUE CROSS ON ANY AND ALL SUCH CLAIMS, AND TO BE BARRED AND PERMANENTLY ENJOINED FROM ASSERTING ANY AND ALL CLAIMS THAT SUCH CLASS MEMBERS HAD, HAVE OR MAY HAVE IN THE FUTURE IN ANY COURT.**

Should anyone wish to opt-out, the class member must sign and return to Class Counsel a letter requesting your exclusion from the class in accordance with the Opt-Out Procedures mailed with this notice and also available from the resources described below. This request to opt-out must be **POSTMARKED NO LATER THAN \_\_\_\_\_, 2003** (the expiration of the Opt-Out Period). The opt-out request must be signed by you and include: your name, current office address, provider number, telephone number, statement that you wish to be excluded from the settlement.

This Notice is not the Class Action Settlement Agreement and merely provides information regarding the settlement. The Class Action Settlement Agreement controls the rights, interests and obligations of the parties. If you have any questions regarding this Notice, the Opt-Out Procedure or the Class Action Settlement Agreement, you may contact Class

Counsel, as described below. If you do not follow the procedures and deadlines that are described in this notice, you may lose significant legal rights, including, but not limited to, the right to have your objections considered by the Court.

Class members may object to the Settlement in writing. All objections to the Settlement shall be submitted in writing to the Court, Class Counsel and Independence Blue Cross within thirty (30) days of the date of this Notice. Anyone wishing to appear at the formal fairness hearing to object to the Settlement shall so specify in his or her written objections. Objections shall be submitted to:

Independence Blue Cross  
c/o Edward F. Mannino  
Akin Gump Strauss Hauer & Feld  
2005 Market Street  
Suite 2200  
One Commerce Square  
Philadelphia, PA 19103  
Fax: (215) 965-1210  
Attorneys for Defendants

Jerome M. Marcus  
Jonathan Auerbach  
Berger & Montague, PC  
1622 Locust Street  
Philadelphia, PA 19103-6365  
Fax: (215) 875-4604  
Fax: (215) 875-5707  
**Class Counsel**

and

and

Prothonotary  
Philadelphia County Court of Common Pleas  
Room 278 City Hall  
Philadelphia, PA 19107

David S. Senoff, Esquire  
Billet & Connor, P.C.  
2000 Market Street, Suite 2803  
Philadelphia, PA 19103  
Fax: (215) 496-7505  
**Class Counsel**

The Court has scheduled a hearing to consider the fairness, reasonableness and adequacy of this Settlement, which will be held on \_\_\_\_\_ at \_\_\_\_\_ in courtroom \_\_\_\_\_ at City Hall, Philadelphia, PA 19107. At that hearing, the Court will determine, among other things, whether the proposed settlement with Independence Blue Cross should be approved as fair, reasonable and adequate, whether the proposed settlement class should be

certified, whether the Court should award attorneys' fees and expenses to plaintiffs' counsel or to the representative plaintiffs, and certain other matters.

**ATTORNEYS' FEES, COSTS AND REPRESENTATIVE PLAINTIFFS' FEES**

The total amount to be paid for attorneys' fees and costs for all plaintiffs' counsel will be capped at \$5 million, which will be subject to the Court's discretion to approve or reject some or all of the fee petitions in the normal course. Any fees as approved by the Court would be funded by a reduction in the duration of the phased in changes identified above. The amount of attorneys' fees shall not be increased even if the total value of this Settlement exceeds the estimate of \$40 million set forth above or for any other reason. In addition, Class Representatives may be awarded a fee not to exceed \$20,000 each, the amount of such payments to be subject to court review and approval. Such payments as approved by the Court will be funded from a reduction in the duration of the phased-in changes.

**EXAMINATION OF PAPERS**

This notice is a summary and does not describe all details of the proposed settlement with Independence Blue Cross, the Settlement Agreement or the proceedings in the action generally.

For complete information or if you wish to discuss this action or have any questions concerning this Notice or rights or interests with respect to these matters, please contact Class Counsel:

**By Telephone:                    1-800-XXX-XXXX**

**Or, Write to:**

**Jerome M. Marcus, Esq.  
Jonathan Auerbach, Esq.  
Berger & Montague, PC  
1622 Locust Street  
Philadelphia, PA 19103-6365**

or

**David S. Senoff, Esq.  
Billet & Connor, P.C.  
2000 Market Street, Suite 2803  
Philadelphia, PA 19103**

**Or, Visit:**

**[www.ibx.com](http://www.ibx.com)  
[www.paorthosociety.org](http://www.paorthosociety.org)**

In addition, you may review complete files of papers submitted in this case at the Office of the Prothonotary, Philadelphia County Court of Common Pleas, Room 278 City Hall, Philadelphia, PA 19107.

Dated: \_\_\_\_\_, 2003

## **CLASS MEMBER OPT OUT PROCEDURE**

If you are a member of the Class and wish to remain in the Class, YOU NEED NOT DO ANYTHING. You are not being sued and you do not need to appear in court. If you do nothing, you will be included in the proposed settlement and be entitled to pursue its benefits, but will be giving up your individual right to pursue any and all claims against Independence Blue Cross, its subsidiaries, affiliates and related entities.

If you do not wish to remain in the Class, or accept the proposed settlement, you can opt out by mailing a letter, postage prepaid, to Class Counsel at the addresses listed below:

Jerome M. Marcus  
Jonathan Auerbach  
Berger & Montague, PC  
1622 Locust Street  
Philadelphia, PA 19103-6365  
**Class Counsel**

and

David S. Senoff, Esquire  
Billet & Connor, P.C.  
2000 Market Street, Suite 2803  
Philadelphia, PA 19103  
**Class Counsel**

Your letter must include the following information:

- Full name
- Current Office Address
- Provider Number
- Telephone Number
- Statement that you wish to be excluded from the class action lawsuits
- Your signature

You must save a copy of the completed letter for your records. **YOUR REQUEST MUST BE POSTMARKED NO LATER THAN \_\_\_\_\_, 2003.**

If you have any questions or concerns regarding this procedure and how it affects your rights you should contact Class Counsel.

# **EXHIBIT**

**“D”**

## **Independence Blue Cross, Pennsylvania Orthopaedic Society and Providers Reach Settlement In Class Action Suits**

PHILADELPHIA, June XX, 2003 — Independence Blue Cross (IBC), The Pennsylvania Orthopaedic Society and three local physicians today announced a settlement in the class action litigation brought by the providers in connection with their payment and reimbursement for services, procedures and products.

The settlement with The Pennsylvania Orthopaedic Society, Drs. Robert P. Good, John R. Gregg and Vincent J. DiStefano on behalf of a settlement class, will address providers' concerns, simplify and streamline the reimbursement process for providers, and result in additional reimbursement to providers.

Under the agreement, IBC will:

- Disclose to providers the standard fee schedules, and changes in fee schedules, that are applicable to the provider's specialty.
- Disclose policies or procedures that may impact the payment or reimbursement that a provider receives for services rendered.
- Process claims in accordance with established standards in various areas, including multiple surgery, radiologic guidance during a procedure, and certain claim specific modifiers used in billing.
- Replace the independent procedure designation with the separate procedure designation of the Current Procedural Terminology.
- Establish a formal resolution process for provider payment disputes.

The estimated financial impact of the processing changes will be approximately \$40 million in additional claims payments to providers over the next two years.

The settlement will apply to all providers who:

- Submitted claims for payment or reimbursement to IBC and/or any Released Party for medical services, procedures and/or products,
- And who have been, claim to have been and/or may have been denied payment or reimbursement or have, claim to have, and/or may have received reduced payment or reimbursement on such claims.

The Settlement class includes, but is not limited to, all claims by providers for downcoding and/or bundling, however described or characterized.

Both IBC and the physicians called the terms of the settlement fair, reasonable, adequate and in the best interests of the settlement class and its representatives.

While IBC denies the allegations of the class action litigation, it has agreed to the settlement in order to avoid lengthy, complex and time-consuming litigation, and is pleased that the resulting settlement will address providers' concerns, simplify and streamline the reimbursement process for providers, and result in additional reimbursement to providers.

While the settling doctors believed they had meritorious claims, they too entered the Settlement Agreement to avoid lengthy, complex and time-consuming litigation. They believe that the settlement is in the best interests of providers.

The Notice of Proposed Class Action Settlement can be accessed at [www.ibx.com](http://www.ibx.com) or [www.paorthosociety.com](http://www.paorthosociety.com).

Independence Blue Cross is represented by Akin, Gump, Strauss, Hauer & Feld, L.L.P. The Pennsylvania Orthopaedic Society and provider representatives are represented by the law firms of Billet & Connor, P.C. and Berger & Montague, P.C.