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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 07-0064 – December 15, 2011

Trustees: Micheal W. Buckner, Daniel L. Fassio, Morris D. Feibusch, and Michael H. Holland.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan.

### Background Facts

Complainant's son and daughter received Hepatitis A vaccines on June 12, 2009, and Complainant's daughter also received a Gardasil human papillomavirus ("HPV") vaccine on the same date. Complainant's daughter received a second dose of the Gardasil HPV vaccine on August 18, 2009. Respondent has denied payment for the vaccines.

### Dispute

Is Respondent required to provide benefits for the vaccines that Complainant's son and daughter received on June 12, 2009, and that Complainant's daughter received on August 18, 2009?

### Positions of the Parties

Position of the Complainant: The attending physician deemed the vaccines to be medically necessary, and, therefore, they are covered under the terms of the Employer Benefit Plan.

Position of the Respondent: The vaccines were not medically necessary, and, therefore, they are not covered under the terms of the Employer Benefit Plan.

### Pertinent Provisions

The preamble to Article III of the Plan states, in pertinent part:

#### ARTICLE III BENEFITS

Covered services shall be limited to those services which are reasonable and necessary for the diagnosis or treatment of an illness or injury and which are given at the appropriate level of care, or are otherwise provided for in the Plan. The fact that a procedure or level of care is prescribed by a physician does not mean that it is medically reasonable or necessary or that it is covered under this Plan. In determining questions of reasonableness and necessity, due consideration will be given to the customary practices of physicians in the community where the service is provided. Services which are not reasonable and necessary shall include, but are not limited to the following: procedures which are of unproven value or of questionable current usefulness; procedures which tend to be redundant when performed in combination with other procedures; diagnostic procedures which are unlikely to provide a physician with additional information when they are used repeatedly; procedures which are not ordered by a physician or which are not documented in timely fashion in the patient's medical records; procedures which can be performed with equal efficiency at a lower level of care.

Article III.A(3)(o) of the Plan states, in pertinent part:

#### III.A(3) Physicians' Services and Other Primary Care

##### (o) Primary Medical Care – Miscellaneous

1. Benefits are provided for care of newborn babies and routine medical care of children prior to attaining age 6.
2. Benefits are provided for immunizations, allergy desensitization injections, pap smears, screening for hypertension and diabetes, and examinations for cancer, blindness, deafness, and other screening and diagnostic procedures when medically necessary.
3. Benefits are provided for physical examinations when certified as medically necessary by a physician. Medically necessary will mean that a Beneficiary (i) has an existing medical condition under treatment by a physician, (ii) has attained age 55, (iii) is undergoing an annual or semi-annual routine examination by a gynecologist or (iv) is undergoing a routine examination prescribed by a specialist as part of such specialist's care of a medical condition.

### Discussion

Article III of the Employer Benefit Plan provides benefits for vaccines that are medically necessary. The Funds' Medical Director reviewed the medical records in this ROD and concluded that there was no documentation to verify that Complainant's children had an increased risk of infection from Hepatitis A as recommended by the Centers for Disease Control and Prevention ("CDC") guidelines. Therefore, the Funds' Medical Director determined that the Hepatitis A vaccinations were not medically necessary.

CDC guidelines recommend the Gardasil HPV vaccine for all females between the ages of 13 and 18 who have not been previously vaccinated against HPV. Based on these guidelines, the Funds' Medical Director concluded that the Gardasil HPV vaccines that Complainant's daughter received on June 12, 2009, and August 18, 2009, were medically necessary.

### Opinion of the Trustees

Respondent is not required to provide benefits for the Hepatitis A vaccines Complainant's children received on June 12, 2009, under the terms of the Employer Benefit Plan. Respondent is required to provide benefits for the Gardasil HPV vaccines Complainant's daughter received on June 12, 2009, and August 18, 2009, under the terms of the Employer Benefit Plan.