



November 14, 2024

In 2012, antitrust claims were filed against Blue Cross Blue Shield (BCBS). The claims focused on BCBS' anti-competitive use of limits to competition and Most Favored Nation clauses that restrict providers' price-setting ability. The case, filed in Alabama federal court, was divided into two tracks: one for subscribers, individuals and employers who purchased insurance from BCBS, and a second track that involves claims by a national "class" of providers, including all 6,000 hospitals across the United States.

The first track (the subscriber track) recently resulted in the U.S. Supreme Court affirming a settlement for subscriber claims for \$2.7 billion, plus changes to BCBS' business practices.

The second track (the provider track) contends that BCBS' practices caused massive underpayments to hospitals, likely exceeding \$100 billion in total. A proposed settlement was announced on Oct. 14. The Alabama court will hold a hearing on preliminary approval of this settlement on Nov. 14.

The plan for allocating the settlement funds among hospitals is based on a hospital's historical allowed amounts for its BCBS insurance claims, adjusted by an undisclosed factor derived from the BCBS market share in a hospital's geographic area, and the year of the charges.

Independent estimates suggest that BCBS' misconduct caused hospitals to be underpaid in the range of 5-10% by BCBS insurers, and given the 16 years covered by the settlement (2008 to 2024), this underpayment could be very large for individual hospitals or health systems.

These underpayments are magnified by the fact that under federal antitrust law, damages are automatically tripled if a hospital can prove liability. But this multiplier is only available for hospitals that choose to opt-out of the national settlement and pursue their own claims outside the settlement process.

Assuming the court approves the preliminary settlement plan, notice will be sent to all class members, including Illinois hospitals. Hospitals will have 90 days after approval to opt-out of the settlement.

Illinois hospitals may want to learn more about their options, including whether to opt-in to the class settlement or to opt-out of the settlement, and what each option might mean financially for their institution.

The law firm Whatley Kallas LLP, which has been the lead counsel involved in this litigation representing the providers, is hosting a Nov. 20 webinar to explain the case and settlement. Hospitals are encouraged to register for this webinar to understand the case, their options and how to proceed. For registration information and additional details, [click here](#).

In the event that a hospital decides to opt-out of this settlement and pursue their own case against BCBS, there are numerous firms who have offered to represent such hospitals, including, but not limited to, Zuckerman Spaeder. While IHA does not endorse any particular law firm, we have worked with Zuckerman Spaeder in the past, and they have been working on this particular case since it began in 2012.

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