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Blue Cross Settles Suit Over Flawed Reimbursement Numbers

By Allissa Wickham

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Law360, New York (November 14, 2013, 5:25 PM ET) -- Horizon Blue Cross Blue Shield of New Jersey Inc. settled a class action Wednesday that accused the insurer of under-reimbursing health plan subscribers for out-of-network services, agreeing to stop using a database that produced allegedly flawed calculations and to pay up to \$2.5 million in attorneys' fees.

According to a proposed settlement filed in the District of New Jersey, Horizon will stop using the Ingenix database to calculate claims for covered services provided by out-of-network providers. The company will also discontinue use of its "Top of Range" reimbursement schedule for such claims, which plaintiffs' attorney Bruce Nagel said was "statistically flawed."

"The settlement will affect millions of Horizon plan members and their ONET providers," the plaintiffs said in a support brief filed with the settlement. "The joint application ... grants the class significant declarative and injunctive relief in the form of business reforms as well as fees and class representative payments."

In addition to its database changes, Horizon agreed to pay up to \$2.5 million in attorneys' fees to class attorneys. The insurer will also provide awards of \$20,000 to Catherine

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Settlement

Brief

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Case Information

Case Title

TRACK MCDONOUGH v. HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY, INC.

Case Number

2:09-cv-00571

Court

New Jersey

Nature of Suit

Judge

Stanley R. Chesler

Date Filed

February 9, 2009

Law Firms

TRACK Greenberg Traurig

McDonough and \$15,000 to the New Jersey Psychological Association, the lead plaintiffs in the case.

“Obviously, we’re pleased with the result,” plaintiff attorney Nagel told Law360 on Thursday. “We’re pleased to have resolved the case on these terms.”

McDonough filed the suit in 2009, accusing Horizon of violating the Employee Retirement Income Security Act by making out-of-network determinations based on “unauthorized and undisclosed rules,” according to the complaint.

Her suit was later consolidated with an action brought by the New Jersey Psychological Association and psychologist Barry Helfman, who said Horizon failed to pay nonmedical providers reasonable rates for their services.

In the settlement filed Wednesday, Horizon said it would start phasing out Ingenix 60 days after the judge signs off on the agreement, but not before Jan. 1, 2014. The database will be discontinued as each covered contract is renewed or replaced, except in instances when state or federal regulation requires the use of Ingenix.

The insurer will also update its plan language, member handbook, website and marketing materials to explain how it calculates reimbursement amounts for covered services provided by ONET providers.

Additionally, plaintiffs are seeking certification for two subclasses for settlement purposes. The classes include all subscribers who were enrolled in health plans with out-of-network benefits and all nonmedical ONET providers who supplied services from Feb. 9, 2003, to the date of the preliminary approval order. According to the support brief filed by the plaintiffs, the subscriber subclass has been estimated by Horizon to be about three million people.

This case isn’t the first time that Ingenix helped land an insurer in hot water. The company also designed the database that allegedly provided insufficient reimbursement to doctors

Companies	Track
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BlueCross BlueShield of New Jersey	<input type="checkbox"/>

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who sued Aetna Inc., resulting in a **\$120 million settlement**.

Attorneys for Horizon were not available for comment when contacted Thursday afternoon.

The plaintiffs are represented by Nagel Rice LLP.

Horizon is represented by Greenberg Traurig LLP.

The case is McDonough v. Horizon Blue Cross Blue Shield of New Jersey Inc., case number 2:09-cv-00571, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Martin Bricketto. Editing by Kat Laskowski.

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