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Horizon Settlement of Class Action Over Eating Disorder Coverage Is Approved

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A federal judge gave final approval Tuesday to a class action settlement that requires Horizon Blue Cross of New Jersey to expand benefits for 1.5 million eating disorder patients and pay up to $2.45 million to the plaintiffs' lawyers.

Left for another day was the division of the award between the two feuding plaintiffs' firms in the case.

Under the settlement approved by U.S. District Judge Faith Hochberg in Newark, 566 Horizon insureds whose coverage for anorexia and bulimia were limited by Horizon restrictions will recover about $1.2 million.

Horizon also agreed to treat any future eating disorder claims by 1.5 million of its 3.3 million insureds as they would claims for biologically-based mental illnesses (BBMI) like schizophrenia – reforms that will cost the company an estimated $17.8 million.

As a practical matter, the settlement in *Drazin v. Horizon Blue Cross*, 06-6219, requires Horizon to abandon restrictions limiting treatments to 20 outpatient visits per calendar year and 30 days of hospitalization.

Medical experts have been saying for years that the long-term treatment Horizon has agreed to fund, particularly on an outpatient-basis, is necessary to address the physical and psychological causes of the illness. Most of the patients are young women.

Hochberg said the settlement, besides being fair, adequate and reasonable as required by law, will help "young people caught in a world they do not understand."

Many of insureds affected by the settlement are in line to obtain substantially the same benefits starting in January 2010 when the U.S. Mental Health Parity Act goes into effect. Under that law, carriers must provide BBMI coverage for eating disorders to insureds in group health plans sponsored by employers

with 51 or more employees.

Tuesday's settlement requires Horizon to provide better coverage for small group plans, too.

About 1.8 million patients in Horizon's self-funded plans, such as employee welfare and state worker health benefits programs, would not automatically benefit from the settlement.

Eating disorder patients obtained a similar settlement last October in a case against Aetna, *De Vito v. Aetna*, 07-418. In that pact, also approved by Hochberg, Aetna agreed to make $300,000 in payments to 119 insureds whose past coverage was limited and to provide BBMI status to future patients among about 500,000 insureds in fully funded plans.

Bruce Nagel, of Nagel & Rice, who was class counsel in both the Aetna and Horizon cases, told Hochberg on Tuesday that the differences were minor. The key difference is that Aetna established a plaintiff-friendly arbitration system for disputed claims while Horizon will retain control of the claims adjudication process, albeit with millions of dollars dedicated to claims approval.

Fee Allocation Postponed

Nagel's characterization of the Aetna settlement as a template for the Horizon pact dovetails with his argument that Hochberg should look with disfavor on the application by companion counsel Mazie Slater Katz & Freeman for half the fee.

Mazie Slater, whose four name partners were with Nagel in Nagel Rice & Mazie before its 2006 breakup, filed the first eating disorder case against Horizon, *Beye v. Horizon Blue Cross*, 06-5337 in November 2006. Nagel filed the Drazin case a month later. The cases were consolidated for discovery and *Beye* was folded into the settlement.

Nagel argues that the settlement with Horizon wouldn't have been possible without the experience he gained in Aetna and that the work he did to settle Horizon entitles his firm to get all the fees, except perhaps for a modest sum to Mazie Slater.

Lawyers at Mazie Slater argue that they deserve at least half the fee. They say the case was resolved because of experts they hired, vast hours the firm expended in discovery and legal arguments they developed and would have pursued if Nagel hadn't settled the case out from under them on short notice.

Hochberg said she would accept further briefing on the fee fight between the two Roseland firms until early May and make a decision, perhaps without oral argument.

At Tuesday's hearing complained that judicial time better spent on the substance of class action cases is diverted to fee disputes.

And she made a point of emphasizing the words "up to" before approving the total fee amount, suggesting the combatant law firms may end up sharing less than $2.45 million.