

Horizon Deal, \$2.5M Atty Fees OK'd In Reimbursement Suit

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Law360, New York (July 10, 2014, 6:38 PM ET) -- A New Jersey federal judge on Wednesday approved the settlement of a class action accusing Horizon [Blue Cross Blue Shield](#) of New Jersey Inc. of underpaying reimbursements, backing the insurer's plan to decommission a controversial database and awarding class counsel \$2.5 million despite protests.

U.S. District Judge Stanley R. Chesler endorsed the settlement, which resolves a class action brought against Horizon by the New Jersey Psychological Association along with a psychiatrist and Horizon policy holder alleging Horizon underpaid subscriber reimbursements for out-of-network services.

Under the settlement, Horizon will stop using the allegedly faulty 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 called "statistically flawed." Judge Chesler acknowledged the controversy over the database in his opinion, mentioning similar pending litigation against [Aetna Inc.](#) and [Cigna Corp.](#)

Under the settlement's terms, Horizon will begin phasing out Ingenix within 60 days. 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 out of-network providers.

The settlement will cover more than 2.8 million class members, and Judge Chesler said the class response to the settlement was overwhelmingly positive with only 471 opt-outs among the nearly 2.7 million Horizon customers notified via direct mail.

Nagel and his firm [Nagel Rice LLP](#) will collect \$2.5 million in attorneys' fees, after Judge Chesler lauded the firm's handling of the complex case in a "skilled and able" manner.

“Advocating for the class, but also recognizing the weaknesses of the claims, class counsel engaged in earnest, arms-length negotiations with Horizon in an effort to obtain a remedy for the class,” the opinion said. “They have successfully done so, and for the reasons set forth above, this court finds the settlement fair, reasonable and adequate.”

The sliver of opt-outs contested the settlement and fee awards, urging Judge Chesler to reject both because of the settlement’s nonmonetary nature. The opposition to the settlement claimed the suit was worth as much as \$10 billion in damages.

Nagel told Law360 the award was completely appropriate based on the circumstances and dismissed the objectors’ arguments.

“I think those criticisms are a joke,” Nagel said. “The settlement was found by the court to supply a substantial benefit to the class members, and suits like this are settled on nonmonetary terms all the time.”

Representatives for Horizon did not immediately respond to requests for comment on Wednesday.

The lead plaintiff in the suit, Cathleen McDonough, accused Horizon of breaching its insurance agreements by not honoring a policy standard for such out-of-network reimbursements. Horizon has countered that the plaintiff oversimplified its plans and its process for such reimbursements, and failed to show a systematic underpayment of claims.

The plaintiffs are represented by Bruce H. Nagel of Nagel Rice LLP.

Horizon is represented by Phillip Sellinger and David Jay of [Greenberg Traurig LLP](#).

The case is Cathleen McDonough and New Jersey Psychological Association, et al., v. Horizon Healthcare Services Inc., case number [09-cv-00571](#), in the U.S. District Court District of New Jersey.

--Additional reporting by Allissa Wickham and Martin Bricketto. Editing by Chris Yates.

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