



COMPLIANCE BULLETIN

BLUE CROSS BLUE SHIELD ASSOCIATION TENTATIVE \$2.67 BILLION ANTITRUST SETTLEMENT

Blue Cross Blue Shield Association (BCBSA) has recently reached a tentative \$2.67 billion settlement arising out of a class action lawsuit filed more than eight years ago by subscribers seeking injunctive and compensatory relief arising out of BCBSA's alleged violation of federal antitrust laws. The settlement will result in the dismissal of the case and a finding of no liability against BCBSA for the subscriber's claims, which BCBSA continues to reject in their statement regarding the litigation.

Alleged Violations

The subscribers alleged that BCBSA violated several provisions of the Sherman Antitrust Act, which is a federal law prohibiting interference with trade and competition, by entering into an unlawful agreement that interfered with competition in the health insurance market by: (1) allocating geographic territories among members of the Blues association, thereby limiting subscriber choice; (2) limiting Blue member plans from competing against each other, even when not using a Blue by name, by mandating a minimum percentage of business that each member plan must perform under that name, both inside and outside each Blue member plan's territory; (3) restricting the right of any Blue member plan to be sold to a company that is not a member of BCBSA; and (4) agreeing to other ancillary restraints on competition.

The subscribers alleged that the overall impact of the BCBSA's conduct was the limitation on subscriber health insurance options and pricing. The subscribers alleged that they paid inflated premiums as a result of the Blues' anti-competitive practices and sought monetary and injunctive relief.

Settlement

After nearly five years of negotiations, the parties have agreed to a proposed settlement with the monetary value of \$2.67 billion payable to qualifying policyholders and employees of insured groups and self-funded accounts covered by a Blue-branded commercial health benefit product. These products include, but are not limited to, medical, pharmacy, dental and vision services, regardless of whether the individual contributed to the cost of coverage. Individuals covered by a stand-alone vision or dental product are not covered by the settlement, nor are beneficiaries and dependents. The settlement agreement apportions the settlement fund distributions between employers and covered employees when both parties make a claim.

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The settlement also includes the following historic injunctive relief designed to enhance competition in the health insurance market.

- The elimination of the Blues' national revenue cap on competition when they are not using the Blue names and marks, which will allow Blue plans to compete against other Blue plans when the coverage is not sold under the Blues umbrella.
- The ability for certain qualified national accounts, which are employers that offer the same benefits coverage across multiple sites, who could previously only seek one Blue bid, to seek an additional national bid from a Blue plan.
- Limits on BCBSA's restraints on acquisitions.
- New guidelines to permit direct contracting between non-provider vendors and self-funded accounts.

Compliance with the injunctive relief will also be accompanied by a five-year monitoring period by the court and a committee formed for this purpose.

Impact

The impact of the settlement is intended to increase competition by providing subscribers with more choices and result in more favorable pricing.

Next Steps

Innovative is actively monitoring this settlement and as qualifying class members are determined, we will contact any clients impacted. If you have any questions, please contact Innovative Benefit Planning at icomply@ibpllc.com



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