

Blue Cross of California Settles Class-Action Suit Over Policy Cancellations

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OLDWICK, N.J. May 15 (BestWire) — As part of a class-action settlement, Blue Cross of California has agreed to stop retroactively canceling individuals' health insurance coverage unless the company can show an insured intentionally misrepresented information on their insurance application.

The settlement addresses so-called post-claims underwriting, where Blue Cross allegedly would cancel coverage after a policyholder filed a costly medical claim.

The centerpiece of the accord is the business practice changes Blue Cross is enacting, said William Shernoff, the attorney who represented the class of about 6,000 Blue Cross policyholders. The Department of Managed Health Care, the state's HMO regulator, and the Department of Insurance were involved in the mediation process, which was overseen by former state Supreme Court Justice Edward Panelli.

However, the California Medical Association, which represents 30,000 state doctors, and California hospitals, last year sought to join the suit. They maintained Blue Cross's alleged rescissions directly impact them because they aren't being paid for their services and instead being directed by Blue Cross to collect from the patients (BestWire, Dec. 29, 2006).

At the May 11 Los Angeles Superior Court hearing, the doctors and hospitals raised concerns about the settlement, and the judge was "sufficiently concerned about those problems," said Daron Toooh, one of the lead attorneys for these providers. As a result, the judge delayed a decision on whether to approve the settlement until June 7, Toooh said.

The judge hasn't yet heard the providers' motion to join, Shernoff said. However, "we tried to assure them that nothing in this settlement interferes with their right to go after Blue Cross," he added.

Under the settlement, Blue Cross, the state's largest health insurer, must follow new procedures in which it may cancel policies only if it finds there was "willful representation" by the insured.

The settlement also includes a new insurance application for individuals that's intended to reduce mistakes, said Shernoff, of Shernoff, Bidart & Darras. "That was the root of the problem — the application was so complex and confusing that most people couldn't understand it and they made all kinds of mistakes," he said. The Department of Managed Health Care helped design and approve the new application, he said.

Earlier this year, the Department of Managed Health Care held a public hearing on proposed regulations to address the alleged practice by other California health insurers, including nonprofits Blue Shield of California and Kaiser Foundation Health Plan (BestWire, Feb, 8, 2007).

Blue Cross, a unit of WellPoint Inc. (NYSE: WLP), said it agreed to settle the class action "based on misrepresentations of the members' true health status when applying for health insurance." The company denied wrongdoing.

Blue Cross also said it expressly reserved its right to contest a requirement for intentional misrepresentation, while recognizing that the Department of Managed Health Care will only allow filings with that language at this time. "Rescissions are rare and difficult for all involved, but are a necessary part of the underwriting process to safeguard against fraud and misrepresentation," the company said.

The settlement provides remedies for the 6,000 policyholders whose coverage was rescinded by Blue Cross, Shernoff said. They can ask for another review, and if no willful misrepresentation is found, Blue Cross will pay their medical bills, he said. If Blue Cross wants to uphold its decision to rescind, an independent review will be held, he said. Or, a policyholder can receive \$1,000 from Blue Cross. Finally, a policyholder can opt-out of the settlement, he said.

Since January 2003, Blue Cross said it rescinded less than 1% of new enrollments, which is, on average, about 1,000 policies a year of about 260,000 new enrollments a year.

Meanwhile, Shernoff said he has similar suits, filed on individual basis, pending against Blue Shield and Health Net Inc.

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