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Court upholds \$2.7 billion

Blue Cross antitrust settlement

Benefits will now be distributed to the subscribers who sued Blue Cross more than a decade ago.

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Associate Editor



Photo: SimpleImages/Getty Images

An 11th Circuit panel in Atlanta has upheld a class action settlement (<https://fingfx.thomsonreuters.com/gfx/legaldocs/lbvgoyodevq/ca11-bluecross-antitrust-20231025.pdf>) in a \$2.7 billion antitrust case against the Blue Cross Blue Shield Association, which means benefits will now be distributed to the subscribers who sued Blue Cross more than a decade ago.

The plaintiffs, in their suit, had accused the health insurer of Sherman Antitrust Act violations, including limiting competition between its 36 insurer companies, which in turn resulted in a price hike for members.

WHAT'S THE IMPACT?

The three-judge panel's decision upholds the Alabama District Court's August 2022 approval of the settlement. Actions against Blue Cross were consolidated in Alabama and split into a track for subscribers and one for

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healthcare providers; District Court Judge R. David Proctor imposed terms on Blues plans that change the way they operate in such a way as to boost competition among insurers.

That, however, resulted in appeals to the 11th Circuit, including from Home Depot, which said the agreement violates public policy and would harm the power of antitrust enforcers to bring claims against Blue Cross in the future. That, said Home Depot, is because the agreement includes a release of future antitrust class claims originating from Blue Cross.

The court disagreed, saying the appeal does not affect public enforcement of antitrust laws or bar the federal government from pursuing criminal charges or civil claims against the insurer.

Another appeal, from consulting firms Topographic and Employee Services, took issue with the lower court's plan to distribute the monetary awards, saying the larger, self-funded subclass in the suit would only be awarded 6.5% of the funds, with the lion's share going to the fully insured subscriber class.

The 11th Circuit disagreed, writing in the ruling that the allocation was "unequal" but not "unfair," as it was based on the relative strengths of each class's antitrust claims, and the competitiveness of the fully insured market.

The deal does not resolve claims from companies that opted out of the class action and are pursuing their own lawsuits. Health providers also have pending claims.

THE LARGER TREND

The District Court decision was handed down (<https://www.healthcarefinancenews.com/news/bcbs-27-billion-settlement-receives-final-approval>) in August 2022. The settlement resolves claims that the insurers violated antitrust laws by entering into an agreement not to compete with each other and to limit competition among themselves in selling health insurance, according to the BCBS settlement (<https://www.bcbssettlement.com/>) website. BCBS has denied all allegations of wrongdoing.

In October 2020, the Blue Cross Blue Shield Association and Blue Cross and Blue Shield companies said they had reached an agreement to settle a legal dispute challenging elements of Blue Cross Blue Shield Association licensing agreements.

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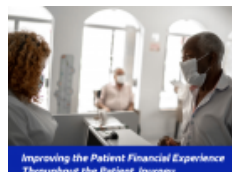
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Improving the Patient Financial Experience Throughout the Patient Journey



(<https://cloud.emailhimss.org/improving-the-patient-financial-experience-throughout-the-patient-journey>)

While many healthcare providers believe that improving the patient financial experience is a critical step for their organization, few have done so successfully. Read this brief to learn strategies that increase patient ...

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The Blue Cross Blue Shield Association is a national federation of 35 independent, community-based and locally operated Blue Cross and Blue Shield companies.

In November 2020, Anthem said it would pay \$594 million (<https://www.healthcarefinancenews.com/news/anthem-paying-594-million-settle-blues-antitrust-settlement>) as its share of the antitrust settlement. Anthem operates Blue Cross and Blue Shield plans in 14 states.



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The American Hospital Association and

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American Medical Association are among the 11 organizations signing the letter. Inequities can be found in every facet of the industry, but targeting medical students and residents can help stem the tide.

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