

# Next Steps In The \$2.8B Blue Cross Payout To Providers

By **Michael Greer, Nathan Chubb and Liliann Stoll** (November 14, 2024, 5:25 PM EST)

On Oct. 14, plaintiffs representing a class of healthcare providers in In re: Blue Cross Blue Shield Antitrust Litigation reached a settlement [agreement](#) with the [Blue Cross Blue Shield Association](#) and its member companies over allegations of suppressing competition and underpaying providers.

The Blue Cross Blue Shield network will pay \$2.8 billion to a settlement fund, and implement transparency and accountability measures within BCBS to ensure the alleged anticompetitive behavior does not continue.

This settlement follows the \$2.67 billion settlement finalized earlier this year with subscribers.

Healthcare providers must now decide to participate in the proposed settlement, or opt out and assert their own claims. This article explores these options.

## Background

Over a period of 12 years, health plan subscribers and healthcare providers sought legal action, alleging BCBS violated the antitrust laws by allocating markets through exclusive service areas and fixing prices paid to healthcare providers through the BlueCard program.

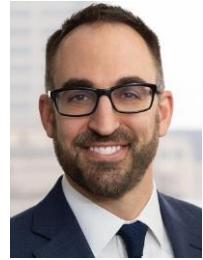
These actions suppressed competition and allegedly caused BCBS to overcharge subscribers while providers were underpaid.

BCBS agreed to settle the matter, saying it wanted to put years of litigation behind it. The proposed settlement includes a \$2.8 billion fund to reimburse providers and a commitment to make operational changes within the BCBS organization to prevent future anticompetitive conduct.

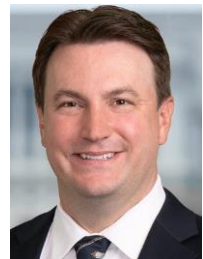
The proposed settlement is subject to approval by the U.S. District Court for the District of Alabama, and the hearing on the motion for preliminary approval of the settlement was held on Nov. 14. A decision was not yet made.

## Qualifying Providers

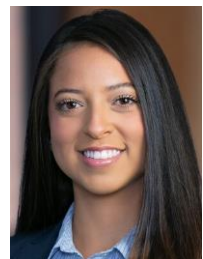
To be eligible to participate in the settlement, practitioners, health systems, and owners and operators of other facilities must have treated BCBS patients between July 2008 and October 2024. For settlement allocations, health systems and other facilities constitute one reimbursement group, while providers constitute a second.



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## **Plan of Distribution**

Provider payments under the settlement agreement are based on (1) whether the individual provider opting in is a hospital, other facility or practitioner; and (2) the allowed amounts under the firm's reimbursement during the relevant time period.

Prior to distribution, class attorneys requested a 25% distribution, or \$700 million, as well as an additional approximately \$100 million for class marketing and similar expenses, leaving approximately \$2 billion in the settlement fund.

Economists for the plaintiffs estimate that the impact of the BCBS conduct was 3.5 times larger on healthcare facilities, including general acute care hospitals and other facilities such as outpatient centers, ambulatory surgery centers, etc., than on individual practitioners and practitioner groups.

Economists for the plaintiffs also estimate that 65% of individual practitioners and practitioner groups released their claims in a similar action finalized earlier this year.

Therefore, the proposed settlement will distribute 92% of the settlement fund to healthcare facilities. Those providers that did not opt in to the prior settlement will share in the final 8% of the fund.

Providers and health systems have two potential methods to determine the allowed amounts BCBS paid the provider in the relevant period. For hospitals and other facilities, providers may choose between the default method and the alternative method.

The default method allows healthcare facilities to provide experts for the plaintiffs with their tax identification number, or TIN, and then those experts will identify the total allowed amounts in their database associated with the TIN, extrapolate for missing data and provide the allowed amount to the opt-in provider to allow for corrections.

The alternative method allows providers to extract their own data for their billing and records system, and present their data to the experts for the plaintiffs.

Nonfacility providers can similarly choose between the default method where experts for the plaintiffs utilize their existing database or the alternative method of providing their own data; however, nonfacility providers will have their data analyzed in \$250,000 increments, rather than exact figures.

Once the experts for the plaintiffs and the opt-in provider agree to the allowed amount, the experts will adjust the allowed amounts by applying a regression model to estimate the impact of BCBS' conduct on that specific provider.

This model determines a provider's total adjusted allowed amounts by TIN. Providers are then entitled to their pro rata portion of the respective settlement fund based on the total adjusted allowed amounts for all opt-in healthcare providers to each fund.

## Other Terms of the Settlement

Other key terms include:

- Allowing hospitals in certain areas to renegotiate aspects of their contracts with BCBS, although the processes of the settlement agreement do not modify or replace any existing arbitration requirement in the participation agreements;
- Creating more transparency on the use of third parties accessing provider data;
- Instituting a real-time messaging system to allow BCBS plans to address certain provider issues;
- Preventing BCBS from requiring providers to participate in certain non-Blue networks as a condition to participate in BCBS plans; and
- Imposing a monitoring team to oversee aspects of BCBS' compliance with the settlement agreement.

## Conclusion

Providers, including health systems, hospitals and other provider groups, should weigh the difference in the potential recovery from either participating in the settlement fund or opting out and submitting their own legal actions against BCBS in the near future to preserve their legal rights.

Considerations should include the type of provider and available funds, the volume of services provided to and revenue associated with BCBS-treated patients, and potential litigation costs of opting out of the proposed settlement.

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