

\$2.8B Antitrust Settlement Will Have Long-Term Impacts on Insurance Industry, Say Attorneys Behind Accord

By Mason Lawlor

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A recent billion-dollar class action settlement will bring an end to an industry giant's monopolization of health insurance and provider markets in most states and change the industry in the long term, according to plaintiffs attorneys.

Last week, a class of health care providers reached an agreement with insurance agency Blue Cross Blue Shield to settle claims of anti-competitive practices for \$2.8 billion, in what litigators say was the largest antitrust settlement in the history of the U.S. health care industry.

The settlement, announced by co-lead counsel of health care boutique firm Whatley Kallas, ended a 12-year litigation filed by hospital systems, physicians and other health care providers challenging Blue Cross Blue Shield's use of exclusive service areas to fix insurance prices and prevent market competition.

Partner attorneys Edith Kallas and Joe R. Whatley, Jr. said in a press release that the long term effect of the settlement will outweigh its monetary award, and that most of the money will go to the healthcare providers.

"The \$2.8 billion cash payment, together with the hundreds of millions of dollars in additional investments the [Blue Cross Blue Shield] are making to improve their systems, will benefit



Courtesy photo

Edith Kallas, left, and Joe R. Whatley, Jr., right, of Whatley Kallas.

providers enormously," Whatley said. "We believe that the actual value to providers is much greater than the total payments."

The 163-page agreement was submitted Oct. 14 and is awaiting court approval from the U.S. District Court for the Northern District of Alabama and U.S. District Judge R. David Proctor.

According to the allegations, the insurance entities colluded to separate coverage from its BlueCard program into exclusive regions where they did not compete with one another, inflating the cost of health insurance and lowering reimbursements for providers.

“When a provider would treat a patient covered by an out-of-area Blue plan (usually an employee of a company headquartered in another state), the Blue plans extended the benefit of those lower rates to each other by requiring providers to accept reimbursement from the out-of-area Blue plan at the same rate as the local Blue plan,” Kallas and Whatley told Law.com.

Along with paying \$2.8 billion, the carrier also agreed to make investments in “system improvements for the benefit of providers,” plaintiffs attorneys said. Kallas and Whatley said it was important that the settlement include significant reforms to the system.

“For decades, health care providers have complained that BlueCard is a non-transparent program that causes additional costs, inefficiencies, and frustration,” Kallas and Whatley said. “Designing relief that improves how providers will be able to deal with the Blues, bringing more transparency, efficiency, and Blue plan accountability, was a painstaking and complicated process.”

Included in the settlement’s terms are 16 categories of requirements the attorneys said were aimed at improving customer communication, transparency in decision-making and third-party dealings, and timeliness of status updates.

Health care providers will also have increased contracting opportunities with the insurers, the attorneys said. After the district court’s official approval, Blue Cross and Blue Shield insurance plans will be overseen by an appointed monitoring committee for five years following the effective date of the settlement.

To usher through the settlement, Kallas said the class gathered a work group of different health care professionals, including representatives of large health care systems, teaching and rural hospitals, physicians, ancillary providers and medical associations. The group gave advice

that the attorneys said will ensure the Blue Card Program meets the reforms with accountability and oversight.

“Hospitals located in counties contiguous to another Blue plan’s service area can contract with that Blue plan not only for themselves, but certain of their affiliated hospitals,” the attorneys said. “In addition, health care providers with so-called contiguous-area contracts will be able to treat all members of the out-of-area Blue plan and submit bills directly to that Blue plan; previously, this procedure was available only for members who lived or worked in the provider’s local area.”

The carrier will also be prevented from requiring that health care providers join the networks of plans they market without Blue Cross or Blue Shield marks, Kallas and Whatley said.

Jeff Gold, Vice President of Counsel for Managed Care and Insurance of the Hospital Association of New York State (HANYs), said the result goes beyond the financial reward and was a long-time coming for hospital associations pushing for reforms.

“For nearly two decades I have helped lead, through my role at HANYs, a multi-state group of hospital associations attempting to obtain meaningful reforms for hospitals and health care systems, including their doctors and ancillary providers, in the Blue Card Program,” Gold stated in the press release. “I have worked closely with Whatley Kallas to continue those efforts in this lawsuit and mediation. This settlement represents a culmination of these necessary, meaningful reforms and will significantly improve the Blue Card Program for all class members.”

Counsel for Blue Cross Blue Shield in the multi-district antitrust litigation, Lauren R. Kennedy and Winnifred Lewis of Cravath, Swaine & Moore in New York City, were not available for comment.