

Denying Liability, Dental Insurer Settles Suit Faulting Claims-Payment Practices

By David Gialanella

Another in a series of class-action suits lodged by dentists and doctors and aimed at reforming insurers' claims-processing procedures has been settled in federal court.

District Judge Stanley Chesler certified the class and finalized an agreement in *Kirsch v. Delta Dental of New Jersey Inc.*, 07-cv-186, which alleged oppressive billing and claims practices that the health-care insurer denied.

The settlement — initially reached last Sept. 14, approved Feb. 8 and announced March 9 — includes no monetary award but requires Parsippany-based Delta to make changes to its "Benefits Connection" website to allow offices to more quickly access and update patient information.

Delta agreed to provide dentists with electronic explanation-of-benefits documents — instead of the paper documents traditionally used — and to allow offices to forgo, in some instances, submitting medical explanation-of-benefits documents before processing claims for procedures typically covered by both medical and dental insurance. Delta also agreed to revise payment processes and to adhere to other terms.

The changes are at various levels of implementation and must remain in place for at least five years, according to the agreement.

"The idea is to speed things along and reduce administrative overhead" for dental providers, says Eric Katz of Mazie Slater Katz & Freeman in Roseland, who represented the class representatives, Caldwell oral surgeon Michael Kirsch, D.D.S., and Northfield oral surgeon Bradford Jungels, D.M.D.

Chesler ordered an agreed-to fee award of \$575,000, reached in mediation, that was less than half of Mazie Slater's calculated lodestar, according to electronic court documents.

"Because the benefits are significant, to get the deal done, we were amenable to compromising our fee," Katz told the *Law Journal*.

One objector filed an appeal challenging the fee award.

Delta's counsel, Philip Sellinger

of Greenberg Traurig in Florham Park, says the company "vigorously denied the allegations in the lawsuit" but settled to eliminate the "continuing costs of litigation and drain on resources." He declines further comment.

The suit charged Delta forced its participating providers to enter into "one-sided, contracts of adhesion" and to agree to "unconscionable terms and conditions." It further charged the company failed to pay submitted claims or reduced payments by "bundling" and "downcoding" complex procedures that required several patient visits.

The suit is one of several that made similar claims to those asserted in *Sutter v. Horizon Blue Cross Blue Shield of New Jersey*, ESX-L-385-02, a physicians' class action also handled by Katz and settled in 2010.

The doctors in that suit alleged Horizon denied legitimate claims and, when it did pay, paid slowly, increasing providers' administrative costs.

In a 2007 preliminary settlement, Horizon agreed to ease the administrative burden on doctors, allow them to turn away new Horizon patients and publish a complete schedule of fees for typical services, among other changes. The company also agreed to pay \$6.5 million in legal fees.

Nine objecting medical groups appealed, claiming that the settlement was flawed because it provided only equitable relief — with no cash payments for doctors — and because the legal fee was excessive.

The Appellate Division in 2009 ordered Superior Court Judge Stephen Bernstein to reconsider the fairness of the overall settlement and make a thorough review of whether the fee award was reasonable.

On June 15, 2010, Bernstein found the settlement fair and reasonable, but cut \$1.8 million from the fee award, resulting in a \$4.7 million fee.

Two similar suits are pending in which Kirsch also is the lead plaintiff. In *Kirsch v. Horizon I*, ESX-L-4216-05, the class seeks more than \$13 million in damages for 10 years' worth of alleged late payments in violation of Prompt

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Payment Regulations, N.J.A.C. 11:22-1.1. *Kirsch v. Horizon II*, ESX-L-109-08, alleged that the insurer engaged in bundling and downcoding, and seeks compensatory damages plus interest for dental services rendered, punitive damages, costs and fees.

The classes were certified, and the suits, both handled by Katz, currently are in discovery.

Other litigation, *Sutter v. Oxford Health Plans LLC*, 05-cv-2198/10-

cv-4903, was in class arbitration when the U.S. Supreme Court decided *Stolt-Nielsen v. Animalfeeds International Corp.*, 130 S. Ct. 758 (2010), which held that imposition of class-action arbitration without an agreement violates the Federal Arbitration Act.

In light of *Stolt-Nielsen*, Oxford argued for the matter to be handled in individual, rather than class, arbitration, which the District Court denied. Oxford appealed the ruling, and the Third Circuit heard arguments in November but has yet to rule. ■

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