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# Deposition: Blue Cross misstated rates for years to Alabama regulators

BCBS.jpg

The exterior of Blue Cross Blue Shield of Alabama headquarters in Hoover



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Blue Cross Blue Shield of Alabama had a policy for years of charging rates different from those filed with state regulators, a practice that violated state law according to attorneys suing the company in federal court.

The policy resulted in overcharges of \$5 million for some small groups and undercharges of \$35 million for others, according to depositions.

The practice came to light after U.S. District Judge David Proctor unsealed depositions on Oct. 18 in a massive anti-trust case against 38 Blue Cross Blue Shield affiliates, including Alabama. The central issue in the case is whether Blue Cross affiliates in different states conspired to limit competition in order to charge higher rates to subscribers and offer lower payments to medical providers.

"We believed and continue to believe Blue Cross is understating the amount of the overcharging," said Barry Ragsdale, an attorney representing subscribers and providers.

In a media response, a Blue Cross Blue Shield of Alabama spokeswoman said the policy actually saved \$75 million for a vast majority of small group subscribers, which includes businesses with 50 employees or less.

"Despite the significant overall savings, our research also revealed that a marginal portion of our small business customers may not have received the most favorable rate when renewing their health insurance," the statement read. "This past summer, Blue Cross self-reported this matter to our regulator, the Alabama Department of Insurance, and is fully cooperating with the Department in its review. The Company will refund affected small employer groups upon the conclusion of the Alabama Department of Insurance's review."

Attorneys for Blue Cross have argued that affiliates' rates have been approved as reasonable by state regulators and shouldn't be challenged in court. Department of Insurance actuary Steven Ostlund and Blue Cross Blue Shield Chief Actuary Noel Carden both testified about the charged rates in the unsealed depositions.

The Alabama case is the first part of the class action to move forward. Blue Cross Blue Shield of Alabama dominates the market for health insurance in the state, with more than 93 percent of the market for large group policies, according to the Kaiser Family Foundation. Next year, Blue Cross will be the only company offering individual plans through the marketplace set up under Obamacare.

Blue Cross is required to file rates every year with the Alabama Department of Insurance. For a period of several years, they charged rates that differed from those on file with the department – a violation of Alabama law, according to attorneys suing the company. In his testimony, Ostlund said the department had not yet determined whether the company violated a law or rule by charging different rates.

In a deposition unsealed by Proctor, Carden of Blue Cross said the policy of holding rates steady from year to year was intended to reduce the shock of big rate increases. However, the company never told the department of insurance about the policy, Ostlund said. The company stopped holding rates in 2014, at the beginning of the Affordable Care Act.

The discrepancy was discovered by Blue Cross Blue Shield officials earlier this year, according to Ostlund's testimony.

Q. Right. But as early as March 2012, you had put Mr. Carden on notice that violation of the Trade Practices Act was a violation of state law, correct?

A. Correct.

Q. Okay. Did you ask or were you told the dollar figures of the rates charged by Blue Cross of Alabama that were different from the filed rates?

A. They indicated that -- current information indicated that they had undercharged thirty-five million to some carriers -- to some employers and overcharged five million to others.

The depositions of Carden and Ostlund focus on how the Alabama Department of Insurance regulates health insurance rates submitted by Blue Cross. Federal officials declared in 2013 that Alabama had an ineffective rate review system, but recently reversed that decision -- giving the state power to approve rates for Obamacare plans in 2017.

Ragsdale said the department's failure to sanction the company for charging rates that differed from the filed rates shows that the state still does not have an effective system for policing big insurance companies.

"They have attempted to argue that they are immune from antitrust law because they have their rates approved by the department of insurance and that is their get out of jail free card," Ragsdale said. "What this does is knocks that leg out of their defense. It illustrates again that the Department of Insurance is underfunded and ill-equipped to regulate a market player with as much power as Blue Cross Blue Shield."

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