Washington State Alternative Care Patients Get Satisfaction

REGENCE BLUESHIELD AGREES TO $30 MILLION SETTLEMENT

Editorial Staff

In 1995, Washington state showed its progressiveness in health care matters with the passage of an "alternative provider" statute (House Bill 1034), which required insurers to cover services provided by all of the state's licensed categories of health care providers, including acupuncturists; doctors of Oriental medicine; medical doctors; chiropractors; naturopaths; physicians assistants; registered nurses; podiatrists; and massage therapists.

Not surprisingly, days before the Jan. 1, 1996 enactment of the bill, a dozen of the state's largest health insurers challenged the law in the courts. The outcome of the legal maneuvering was that in the spring of 1997, a federal judge in Tacoma declared that the bill conflicted with federal (ERISA) law that barred state regulation of employer benefit plans.

During this litigious period, Regence BlueShield, one of the insurers in the lawsuit, determined that the statute applied only to managed care plans, or those plans in which patients were required to go through a primary care physician for a referral to receive specialized treatment. Regence reportedly only allowed "managed care" patients to choose a naturopath as their primary care provider, this left most Regence subscribers, specifically those on the "indemnity" plans, out in the cold. Regence's strategy excluded alternative providers on approximately two-thirds of its plans, while offering limited coverage to the remaining one-third.

In June 1998, however, the U.S. Ninth Circuit Court of Appeals in San Francisco overruled the Tacoma decision and reinstated the law. The court ruled that federal law did not prevent a state from expanding health coverage to its residents. The court recognized that HB 1034 met the traditional tests for insurance matters and therefore fell within the state's jurisdiction.[1]

The Seattle law firm of Sirianni & Youtz was granted permission by the Ninth Circuit Court to present arguments in support of the state's position, and to uphold the laws on behalf of several state alternative care association in urging that the law be held valid and enforceable. Regence, however, continued its policy of excluding and limiting alternative care.

Represented by Sirianni & Youtz, Dale Snow, a CPA in Tacoma (and a managed care patient) became the lead plaintiff in a class action lawsuit in federal court against Regence. Claiming that Regence ignored the "every category" law, the suit charged that Regence must reimburse its subscribers for the out-of-pocket expenses they incurred when receiving treatment from alternative providers.

This action was brought under ERISA, a federal law that governs health plans issued to employees by private employers. Snow and other Regence subscribers (now members of the class action lawsuit) alleged that Regence failed to comply with the "every category of provider" law with respect to health plans governed by ERISA.

On February 22, 1999, the U.S. Supreme Court declined to hear an appeal by the insurance industry, rejecting their attempts to have the law overturned. The justices also let stand the decision of the Ninth Circuit Court.[2]

During that same year, Regence moved to dismiss the Snow, et al. lawsuit as frivolous. Judge William Dwyer denied the motion, certified the lawsuit as a class action suit, and asked the Washington Supreme Court to decide whether the every category law required Regence to provide access to alternative providers on all its health care plans. Sirianni & Youtz argued before the Washington Supreme Court that the law required Regence to provide coverage on all its plans.

The next attack on House Bill 1034 was issued in November of 1999, when Regence BlueShield accused the state's insurance commissioner, Deborah Senn, of interpreting the law too broadly. In their suit, Regence argued that the law should apply only to managed care plans in which a patient's health coverage is managed by a "gatekeeper," and that it should not apply to traditional insurance plans.[3]

The court unanimously rejected Regence's claims. The court decreed that the insurance commissioner's interpretation of the statute was "consistent with the legislature's intent" and pertained to managed care plans and all health care insurance plans offered by health care insurers. The court added that "every health plan offered by Regence (with the exception of basic health model plans)" is subject to the regulations contained within the alternative provider law.

In a unanimous January 2000 decision, the Washington State Supreme Court ruled in favor of Dale Snow et al and stated that the every category law applied to managed and non-managed care plans alike.

Sirianni & Youtz then filed another class action, *Steven Holman v. Regence BlueShield*, to pick up non-ERISA policies (for example, policies governed by state law, such as individual policies). A state court judge certified the case as a class action, and ruled that Regence must allow access to every category of provider on its state law governed policies. With this order, both federal and state actions were brought into alignment on the issue.

Effective March 1, 2000, Regence changed its policies and allowed its subscribers access to acupuncturists and other alternative care providers as the Washington State Supreme Court ordered, but denied that it had any obligation to reimburse the class-action litigants for care received before March 1, 2000.

In July, Federal District Court Judge Marsha Pechman ruled in favor of the class members, finding Regence liable for past benefits wrongfully withheld from their subscribers since 1996 for care the subscribers received from acupuncturists, chiropractors, massage therapists, naturopaths and nutritionists. The amount of damages, and the method by which the class-action litigants will be reimbursed, has yet to be determined by the court as of this writing.

In November, the parties agreed to mediate the damage issue before Judge George Finkle, a retired judge who provides professional mediation services. The parties could not agree on a lump sum of money that Regence should pay, but they did agree on a process to determine that amount.

Another agreement was reached whereby the state and federal class-action suits were combined. An arbitrator, assisted by a PhD health economist, would set the amount of damages Regence must pay. The class-action litigants and Regence presented evidence and testimony before the arbitrator and health economist in a contested arbitration trial.

On February 9, 2001, arbitrator Thomas Brewer awarded $30,400,000 to the combined state and federal class-action litigants for out-of-pocket expenses incurred by Regence subscribers for alternative care between January 1996 and February 2000.

In March, Sirianni & Youtz and Regence's attorneys asked the federal and state courts to approve and confirm the $30,400,000 award and approve a claims process.

Sirianni & Youtz has brought these (and other) class-action lawsuits designed to enforce the requirements of the "every category" law and to recover damages for those people who have had to pay out-of-pocket for their alternative providers.

References

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2. Rauber C. Ruling allows alternative care law to proceed. *Modern Healthcare* March 8, 1999.
3. Washington's "alternative provider" law upheld. *Acupuncture Today*, March 2000.

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