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Mich. BCBS Stingy On Drug Treatment Payments, Suit Says

By **Danielle Nichole Smith**

Law360 (July 31, 2019, 7:13 PM EDT) -- Blue Cross Blue Shield of Michigan was hit with a \$40 million lawsuit Wednesday alleging the insurer improperly slashed its reimbursement rates for substance abuse treatment facilities, choosing to line its own pockets instead of covering the claims even as the state faced a "worsening opioid epidemic."

Serenity Point Recovery Inc. and several other substance abuse treatment facilities said in their complaint that BCBSM cut its reimbursement rates in 2016, causing private providers across Michigan to have to turn away patients and, in some cases, sticking patients with surprise medical bills for tens of thousands of dollars.

BCBSM's reimbursement rates for residential inpatient care dropped from \$1,313 a day to \$151 between April 2016 and July 2016, the complaint said. And yet in 2018, the insurer paid its CEO \$19.2 million and reported \$580 million in profit on revenues of \$29.3 billion, according to the complaint.

"While BCBSM and its executives enjoy astronomical returns, many of their plan members are literally dying in the streets while desperately needed treatment programs are shutting their doors," the facilities said. "BCBSM executives would rather pay themselves than pay for lifesaving substance abuse treatment for their insureds."

The facilities also said that they've had to deal with claims processing and payment issues with BCBSM for more than four years, contending that the problems were systematic attempts by the insurer to avoid having to cover valid out-of-network claims.

For instance, the insurer requires out-of-network substance abuse and mental health treatment facilities to submit their claims by mail, a "highly unusual billing practice in modern health care," the facilities said. And the insurer also changed its billing requirements internally in 2016 without notifying the facilities of the change until about nine months later, according to the complaint.

The facilities said that BCBSM's behavior put them in "a situation that can best be described as Kafkaesque." The wrongly denied, underpaid and incorrectly processed claims since April 2016 total at least \$40 million, according to the suit. Further, as a direct result of the insurer's conduct, Serenity Point Recovery was forced to close, the facilities said.

The complaint noted that Michigan has been one of the states hit hardest by the opioid crisis and said that deaths stemming from other drugs and alcohol had skyrocketed. The suit alleges violations of the Employee Retirement Income Security Act, Mental Health Parity and Addiction Equity Act and certain state laws, including unjust enrichment and fraudulent misrepresentation.

Matthew M. Lavin, an attorney for the facilities, told Law360 on Wednesday that many insurers haven't really been complying with the MHPAEA, a fact that the opioid epidemic has helped bring to light. BCBSM knew that it could get away with low-paying claims for those dealing with substance use or mental health issues because they wouldn't get a lot of patient appeals, Lavin said.

"This suit is about standing up for the rights, both under federal and state law, on behalf of providers

and the people they treat," Lavin said.

BCBSM said in a statement that the insurer is currently reviewing the suit, noting that it "appears to be a complaint by four treatment facilities, three of which are not in our network, and are dissatisfied with their reimbursement."

"BCBSM is confident it followed all appropriate reimbursement methodologies. Blue Cross believes that the best interests of patients are served when insurers, employers and providers of care work together to keep access to quality care affordable," the insurer said in the statement. "Blue Cross is working with community organizations and providers across the state to help address the opioid crisis, including expanding a successful pilot program to treat opioid addiction with two Michigan treatment facilities."

The facilities are represented by Matthew M. Lavin and Aaron R. Modiano of Napoli Shkolnik PLLC, Julie W. Allison and Anelia Shaheed of Julie W. Allison PA, and Phillip B. Slot of the Slot Law Group PLLC.

Counsel information for BCBSM wasn't yet available Wednesday.

The case is Serenity Point Recovery Inc. et al v. Blue Cross Blue Shield of Michigan, case number 1:19-cv-00620, in the U.S. District Court for the Western District of Michigan.

--Editing by John Campbell.

Correction: A previous version of this article misspelled an attorney's name. The error has been corrected.