



HAYS COMPANIES

# Blue Cross Blue Shield Settlement

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As you may recall, since 2013 Blue Cross has been involved in a class-action lawsuit regarding its alleged anti-competitive policies. Brought by a class of over one million plaintiffs, the suit alleged the company violated antitrust law through dividing insurance markets in order to avoid competition among its member companies, thereby boosting prices for individual and corporate policyholders. After years of ongoing litigation and settlement discussions, it was announced in September 2020 that a tentative settlement was reached. The proposed settlement provides that Blue Cross will pay \$2.6 billion to the affected class and institute reforms to increase competition amongst its member companies (thereby presumably helping companies wanting to work with Blue Cross obtain more competitive rates). Although many questions remain, an update in the Blue Cross Blue Shield antitrust litigation provides some insights into several key aspects of the proposed settlement.

**While the settlement has yet to be approved, a one-page “Settlement Facts” document released by Blue Cross provides insight into its view of the proposed settlement. Key points are as follows:**

## **Eligible Class Members Will be Notified by Class-Action Representatives Regarding the Benefits of the Settlement**

The document released makes clear that settlement eligible class members will be notified by the class-action representatives regarding the benefits available to them (“all benefits available to class members will be communicated through the Class Notice process being managed by the Plaintiffs”). Details on the mechanisms for submissions and payments have not yet been released.

**Note:** Class members should be on the lookout for enterprises that purport to be official administrators of the class-action as many of these entities seek to provide unnecessary services at a high cost.

## **Self-Funded National Employers Will be Eligible for a Second Bid from Blue Cross**

This provision of the settlement, addressing one of the core issues in the litigation regarding the lack of competition between Blue Cross’ member companies, allows certain eligible employers to receive a second bid from a national Blue Cross company in addition to its local Blue Cross company. While the settlement will contain specific methodology and criteria for identifying companies eligible for the second bid, eligible employers are generally “self-funded accounts with over 5,000 employees and a large number of employees dispersed across the country.” The earliest eligible employers will be able to obtain the second Blue Cross bid will be April 1, 2022.



## Blue Cross Will Retire its National Best Efforts Requirement

As part of the settlement, Blue Cross will retire its National Best Efforts policy. The policy, which required Blue Cross companies to place primary focus on Blue Cross and Blue Shield-branded business, will be eliminated and its member companies will be able to market coverage under the Blue Cross name or their separate brand without the mandated focus. No timeline for the retiring of this policy was articulated in the “Settlement Facts.”



### Many Questions Left – Hays Companies is Monitoring the Settlement

Details are still sparse and many questions regarding the settlement, particularly its disbursement and second bid process remain. Hays will continue to monitor the situation and provide updates as they become available.

## Contact

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# Settlement Overview



## Blue Cross and Blue Shield Settlement

We recently agreed to settle a class action lawsuit that challenged elements of the Blue Cross Blue Shield Association's licensing agreements. Our national and local capabilities are not changing. The Blue Cross and Blue Shield system is strong and will continue to provide national leadership with exceptional networks – such as BlueCard® and Blue High Performance Network<sup>SM</sup> digital tools, and personalized care support. Blue Cross and Blue Shield of Minnesota has been a part of the community for 80+ years. Our local commitment and dedication to exemplary service that improves access to quality healthcare has never been stronger. That is why more people say they would recommend Blue Cross and Blue Shield coverage over any other major health insurer in the U.S.

As part of the settlement, we have agreed to make some business changes and payments to the settlement class. One change is that the Blue Cross Blue Shield Association will eliminate its national best efforts requirement, which required Blue Cross and Blue Shield companies to place primary focus on Blue Cross and Blue Shield-branded business nationally. Another is that certain large, self-funded national employers will be able to request a bid for coverage from a second Blue Cross and Blue Shield company in addition to their local company. Please see below for a summary explanation of the agreement's key provisions.

### What is a second Blue bid?

Following final approval of the settlement, certain large, self-funded national employers will be able to request a bid for coverage from a second Blue Cross and Blue Shield company in addition to its local Blue Cross and Blue Shield company.

### Who is eligible to receive a second Blue bid?

The settlement agreement includes the methodology for identifying those employers eligible for a second Blue bid. Plaintiffs are administering a website that includes information regarding the terms of the settlement, and identifies the companies that will be eligible to request a second Blue bid once the agreement is approved ([www.bcbssettlement.com](http://www.bcbssettlement.com)). Generally, eligible employers are self-funded accounts with over 5,000 employees and a large number of employees dispersed across the country.

### When will the second Blue bid be available?

The agreement's terms will not go into effect for over a year. These agreements take time to secure final approval, and we do not have exact timing. The earliest an eligible employer could request a second Blue bid is April 1, 2022, although it could be later.

### How will eligible employers get a second Blue bid?

Once the agreement is approved and the terms go into effect, eligible employers – directly or through their broker – can contact the Blue Cross Blue Shield Association or their local Blue Cross and Blue Shield company, documenting their choice of a second Blue Cross and Blue Shield company. Once the second Blue Cross and Blue Shield company agrees to provide a bid, the employer or its broker will work directly with both Blue Cross and Blue Shield companies through the proposal process. The employer will receive separate bids from both Blue Cross and Blue Shield companies and will be able to select

whichever bid it desires. If an employer is headquartered in an area where there are two Blue Cross and Blue Shield companies, they already have the opportunity to request two Blue bids and there will be no changes to that employer's current processes or experiences with those companies.

### What will change for employers that are not eligible for a second Blue bid (i.e., fully insured employers or those that do not meet eligibility criteria)?

We remain dedicated to all our relationships with employers, and the settlement will not adversely impact any existing benefits or coverage. Class members, including those not eligible for a second Blue bid, will receive other benefits from the settlement, such as payments and additional operational changes. All benefits available to class members will be communicated through the Class Notice process being managed by the Plaintiffs. You may visit [www.bcbssettlement.com](http://www.bcbssettlement.com) for more details.

### What are national best efforts? Why are those being eliminated?

Historically, to ensure Blue Cross and Blue Shield brands are being focused on and actively used by licensed companies, the Blue Cross Blue Shield Association has maintained a national best efforts standard. This standard measures each company's Blue Cross and Blue Shield brand use against the company's use of other brands nationally. We agreed to eliminate this requirement as part of the settlement.

### What are local best efforts? Why are those requirements being changed?

Local best efforts measure Blue Cross and Blue Shield brand use in local geographies, and that measurement was clarified during settlement negotiations.

\* Additional relief is provided through the settlement. Details will be communicated to class members through a Class Notice managed by Plaintiffs.