

## Multiple Chiropractors, State Associations File Suit Against Blue Cross Blue Shield

Editorial Staff

Blue Cross Blue Shield has been hit with a class-action suit led by chiropractors and chiropractic organizations including the Pennsylvania Chiropractic Association (PCA), the Association of New Jersey Chiropractors (ANJC) and the New York Chiropractic Council. The suit, filed by [Buttaci & Leardi](#) and renowned class-action law firm [Pomerantz Haudek Grossman & Gross](#), alleges that the BCBS Association and numerous state-based BCBS licensees performed flawed postpayment audits, made improper repayment demands and forced recoupments to recover money previously paid as health benefits for services provided to their subscribers.

Specifically, the lawsuit alleges that the BCBS postpayment audit process violates the Employee Retirement Income Security Act of 1974 ([ERISA](#)) and that the audit and recoupment tactics violate the Racketeer Influenced and Corrupt Organizations Act ([RICO](#)). According to the text of the complaint, filed in [U.S. District Court, Northern District of Illinois](#) on Sept. 10, 2009:

Defendants engaged in concerted action to extort the Individual Plaintiffs and the Class members by (1) falsely accusing them of fraud or having obtained improper overpayments in the receipt of past benefit payments, when, instead, Defendants simply made retrospective adverse benefit determinations under ERISA based on arbitrary and capricious findings that the services in question are not services covered under the applicable health care plans; (2) demanding immediate recoupment of such past payments without giving Plaintiffs or Class members a proper opportunity for appeal or other due process considerations; and (3) withholding, without any basis or authority, benefit payments for current and future benefits otherwise payable to Plaintiffs and other Class members on behalf of new and unrelated BCBS Insureds as a means to force repayment of the fraudulently demanded recoupments. In short, based on false and invalid accusations of fraudulent or improper billing practices, Defendants act as prosecutor, judge, and jury as part of a scheme to steal millions of dollars from the Individual Plaintiffs and Class members.

"In essence, the BCBS Entities simply state there are overpayments and then just take the money from providers, without valid due process protections," said plaintiffs' counsel Dr. Brian Hufford of Pomerantz Haudek in a press release announcing the class-action suit. "We believe this is a blatant violation of law." The release notes that "the amount of funds that are at issue in the lawsuit are substantial. On June 30, 2009, the BCBSA announced that its National Anti-Fraud Department had 'recovered nearly \$350 million as a result of the anti-fraud investigations in 2008.'"

"We believe a substantial portion of this 'recovery' falls within the improper practices we are challenging in this action," said Vincent Buttaci, plaintiffs' co-counsel.

Blue Cross Blue Shield is not the only insurer feeling the sting from the chiropractic profession - [as reported in the Sept. 23 issue](#), ANJC recently joined a class-action lawsuit that alleges Aetna's [postpayment audit](#) procedures violate ERISA and RICO. The suit also questions Aetna's clinical

policy bulletins used for retroactive denial of service. [Buttaci & Leardi](#) and [Pomerantz Haudek](#) have also been retained for this suit, which seeks to stop Aetna from continuing to engage in impermissible audit and recovery practices; to stop Aetna from enforcing clinical policies that are essentially baseless; compensation for chiropractors who have been coerced into making payments to resolve or defend against Aetna's unlawful overpayment actions; compensation for chiropractic trade associations that have devoted significant time and resources dealing with these various improprieties.

OCTOBER 2009