

Aetna Seeks to Terminate its Proposed \$120 million Class-Action Settlement over the use of Ingenix to Underpay Out-of-Network Claims

Late last year, Aetna, Inc. announced a proposed class settlement of up to \$120 million over its use of the flawed Ingenix database. The nationwide settlement would have required Aetna to reimburse providers and Aetna PPO subscribers/patients for losses arising from Aetna's underpayment for out-of-network medical care. A hearing had been scheduled on March 18 in the U.S. District Court in New Jersey for the court to determine whether final approval of the settlement should be granted. Less than a week before the hearing, however, Aetna notified the court it was invoking a provision of the settlement that gave the insurer the right to terminate the agreement if the settlement claims of providers and subscribers opting out of the settlement exceeded \$20 million. Aetna told the court, "Based on the list of Opt-Outs provided by the Settlement Administrator to Aetna and Class Counsel, the Opt-Out levels exceed the threshold." Aetna did not provide specific numbers.

The creator of Ingenix, United Healthcare, entered into a \$350 million class settlement in 2009 for out-of-network underpayments. The New York Attorney General investigated United and Ingenix and concluded that the database was skewed downward to under value medical services. The Attorney General settled with United and more than a dozen other health insurers, including Aetna, over their use of the database.

Counsel for the settling plaintiff class is in the process of determining whether Aetna has properly terminated the settlement. Assuming it was properly terminated, the class action lawsuits against Aetna will resume and move toward trial.

MSNJ, the American Medical Association, and numerous other state medical societies also had sued Aetna over its use of Ingenix, but were not parties to this settlement agreement. The medical societies' claims had been dismissed after a federal court in Miami determined they were barred under earlier settlements reached with Aetna in 2005 over federal RICO claims. That court's decision is currently on appeal.