



# Varnum Wins Important Victory Against Blue Cross Blue Shield of Michigan for Recovery of Millions in Hidden Fees

## Grand Rapids, Michigan

Bridgewater Place  
333 Bridge Street, N.W.  
P.O. Box 352  
Grand Rapids, MI 49501  
Phone: 616/336-6000  
Fax: 616/336-7000

## Metro Detroit, Michigan

39500 High Pointe Boulevard  
Suite 350  
Novi, MI 48375  
Phone: 248/567-7400  
Fax: 248/567-7440

## Kalamazoo, Michigan

251 North Rose Street  
4th Floor  
Kalamazoo, MI 49007  
Phone: 269/382-2300  
Fax: 269/382-2382

## Grand Haven, Michigan

The Chemical Bank Building  
1600 South Beacon  
Suite 240  
Grand Haven, MI 49417  
Phone: 616/846-7100  
Fax: 616/846-7101

## Lansing, Michigan

The Victor Center  
201 N. Washington Square  
Suite 810  
Lansing, MI 48933  
Phone: 517/482-6237  
Fax: 517/482-6937

Important Notice: This advisory has been prepared by Varnum LLP for informational purposes only and does not constitute legal advice. Copyright © 2012, Varnum LLP. All rights reserved.

For more than a year, Varnum has pursued claims against BCBSM on behalf of more than a dozen companies that use BCBSM to administer their self-funded health benefit programs. Four disputes have been settled, and Varnum is actively litigating ten more in federal court, each of which alleges that BCBSM violated federal law (ERISA) by charging hidden fees. The pending lawsuits collectively seek repayment of many millions of dollars in fees charged by BCBSM.

The United States District Court recently entered summary judgment in favor of Varnum's clients, holding that BCBSM engaged in self-dealing when it unilaterally decided how much in fees to pay itself.\* This was a clear violation of ERISA and established liability against BCBSM. Those cases will now proceed to trial to determine the amount BCBSM owes the plaintiffs for its violations of law and whether the plaintiffs filed their claims in a timely manner (statute of limitations).

## Hidden Access Fees

The central issue in these cases relates to hidden "network access fees" charged by BCBSM. The hidden fees are in addition to the administrative fees BCBSM customers agree to pay.

Prior to 1994, BCBSM charged its self-funded customers various surcharges and subsidies to prop up its insured lines of business, but those surcharges and subsidies were disclosed on the bill. Over time, BCBSM's self-funded customers started objecting to those charges. Some refused to pay them all together.

According to an internal BCBSM memo, BCBSM had become "its own worst enemy" because the subsidies and surcharges were "highlighted for all to see." The internal memo recommended against disclosing the surcharges and subsidies as billed items, and instead collecting more revenue by marking up hospital claims costs, and that is

what BCBSM has been doing since 1994. In other words, if an actual hospital claim was for \$1,000, BCBSM would bill the customer a higher amount, say \$1,100, and retain the additional \$100 for itself. According to the memo, "changes to these costs will be inherent in the system and no longer visible to the customer."

Indeed, BCBSM reports hospital claims to its self-funded customers several times a year without mentioning the amount of access fees it keeps for itself. In recent years the access fees are included on a pie chart, but the actual hospital claims reports continue to hide the amount of access fees BCBSM keeps. BCBSM also does not include the amount it keeps in access fees when it discloses total compensation for federal reporting purposes.

Faced with this evidence, the District Court found the general term "Access Fees" to be "misleading," and concluded that BCBSM "decided to hide the [Access Fees] by merging them with hospital claims on billing statements." The Court also noted that the customer bills were not itemized to indicate how much money was owed for the fees because "that would have defeated the purpose of the program."

## Does Your Company Have a Claim?

Varnum has detailed information about this practice, which can help any self-funded customer of BCBSM determine whether it may have a claim and, if so, its potential amount. BCBSM contends that hidden access fee cases are subject to a statute of limitations; waiting to investigate your company's situation could prejudice its legal rights. For more information, contact Perrin Rynders at 616/336-6734 or Aaron Phelps at 616/336-6257.

*\*Past results do not assure similar outcomes in any other matter.*

