

## Litigation Team Secures Dismissal of Claims Alleging Health Coverage Plan Creates Unfair Business Advantage

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The Litigation team secured the dismissal of claims against its client, Horizon Blue Cross Blue Shield of New Jersey, alleging that Horizon's tiered coverage plan gives lower-tier chiropractors an unfair business advantage.

In September 2016, the Association of New Jersey Chiropractors Inc. challenged Horizon's Omnia Health Alliance Plan chiropractic benefits, in which patients of preferred providers with Tier 1 designations pay no deductibles and have no co-insurance obligation, while patients of Tier 2 providers pay up to \$5,000 in deductibles and have a 50 percent co-insurance obligation.

Somerset County Superior Court Judge Kevin M. Shanahan granted Horizon's motion to dismiss the suit, ruling that the state law underscoring the claims aims to protect consumers, not providers. Specifically, the judge found that the state's Health Care Quality Act of 1997, which established adequacy standards for Garden State healthcare provider networks for all managed care plans and state insurance rules relating to the reimbursement of chiropractors, don't create a private right of action for providers.

While both parties agreed that the state laws don't expressly create a private right of action, the association argued that an implied right was present. Judge Shanahan disagreed.

"Unlike civil rights statutes, or other areas in which implied causes of action have been inferred to ensure broad compliance, inferring a private cause of action here would needlessly complicate the larger integrated regulatory scheme. Whether or not a network is adequately served is already regularly reviewed by [the New Jersey Department of Banking and Insurance]," the judge said in a statement of reasons accompanying his dismissal order.

Judge Shanahan added that there was nothing in the legislative history of the law that "reflects an intention to endow chiropractors with a right of action."

Andrew Hamelsky, Michael Kassak, Edward Koch and Luke Repici represented Horizon in this case.