

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:06-cv-20249- MORENO/TORRES

JEREMY S. WEINBERGER, M.D., JEREMY S.
WEINBERGER, M.D., P.A., and PETER F.
MERKLE, M.D., P.A., on behalf of themselves
and all others similarly situated,

Plaintiffs,

CLASS REPRESENTATION

v.

AETNA HEALTH, INC.,

Defendants.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

IF YOU ARE A PHYSICIAN, PHYSICIAN GROUP, OR PHYSICIAN ORGANIZATION WHO PROVIDED EMERGENCY SERVICES AND CARE IN FLORIDA TO ANY HMO PLAN MEMBERS AND YOU WERE PAID BY AETNA FOR THOSE SERVICES OUTSIDE OF ANY CONTRACT OR AGREEMENT AT ANY TIME FROM JUNE 3, 2003 TO DECEMBER 15, 2008, YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF A CLASS ACTION.

1. **WHY SHOULD YOU READ THIS NOTICE?**

If you fall within the settlement class described above, then your rights may be affected by a proposed settlement (the "Settlement") with Aetna in Jeremy S. Weinberger, M.D., Jeremy S. Weinberger, M.D., P.A. and Peter F. Merkle, M.D., P.A. v. Aetna Health, Inc., Case No. 06-20249-CIV-MORENO/TORRES. The Class Representatives have agreed to settle all claims against Aetna in the action in exchange for Aetna's agreement to change its fee schedule for Emergency Services and Care and to make certain settlement payments to Class Members for past claims for Emergency Services and Care.

The Court has scheduled a hearing to consider the fairness, reasonableness and adequacy of the Settlement with Aetna, together with certain other matters, to be held on April 15, 2009, at 2 p.m., at the United States District Court, Southern District of Florida, Judge Federico A. Moreno, at the Wilkie D. Ferguson, Jr. United States Courthouse, 400 North Miami Avenue, 8th Floor, Miami, Florida, 33128 (the "Fairness Hearing"). The Order scheduling that hearing also provides that it may be adjourned by the Court and that no additional notice will be provided to potential members of the Settlement Class other than an announcement in open court.

You may be a member of the Settlement Class and therefore may be entitled to receive the benefits of the Settlement. All members of the Settlement Class also will be bound by the Release, Covenant Not To Sue, and other provisions of the Settlement if it is approved by the Court. You may elect to opt out of the Settlement Class and the Settlement, as explained below. You also have a right to object to any part of the Settlement, but only if you comply with the procedures described in this Notice.

2. **WHAT IS THIS LITIGATION ABOUT?**

This Action was brought by Peter F. Merkle, M.D., P.A., Jeremy S. Weinberger, M.D., and Jeremy S. Weinberger, M.D., P.A. (the "Class Representatives"), who are Florida emergency room physicians, against Aetna. The Class Representatives have alleged that Aetna improperly reduced payments to physicians who render Emergency Services and Care to Aetna HMO Plan Members by making payments at 125% of the Medicare reimbursement rate. The Class Representatives allege, among other things, that Aetna violated Section 641.513, Florida Statutes, a statute governing "usual and customary" payments by Florida HMOs to physicians who render Emergency Services and Care to HMO Plan Members. The Class Representatives claim in the Complaint that these payments violate ERISA and Florida law.

3. **WHAT ARE THE TERMS OF THE SETTLEMENT?**

The terms of the Settlement Agreement are summarized in this Notice, but a copy of the entire Settlement Agreement is available in the Court file, which can be reviewed in the Court's on-line docket or at the office of the Clerk of the Court, U.S. Courthouse, 400 North Miami Avenue, 8th Floor, Miami, Florida 33128 during regular business hours. To the extent any capitalized terms are not defined in this Notice, those terms are defined in the Settlement Agreement and shall be given the meaning set forth therein.

a. **The Settlement Class.**

The Settlement is on behalf of the following Settlement Class:

ANY AND ALL PHYSICIANS, PHYSICIAN GROUPS, OR PHYSICIAN ORGANIZATIONS WHO PROVIDED EMERGENCY SERVICES AND CARE IN FLORIDA TO ANY HMO PLAN MEMBERS AND WHO WERE PAID BY AETNA FOR THOSE SERVICES OUTSIDE OF ANY CONTRACT OR AGREEMENT DURING THE CLASS PERIOD.

The "Class Period" means the period June 3, 2003 through December 15, 2008.

b. The Settlement Consideration.

i. Aetna's New Florida ER Fee Schedule.

As of the Preliminary Approval Date, for Emergency Services and Care rendered to an HMO Plan Member by any Class Member, Aetna will make any payments under a new fee schedule ("New Florida ER Fee Schedule").

The New Florida ER Fee Schedule shall substitute payment rates based on 239% of the applicable Medicare allowed amount for all Emergency Services and Care for which Aetna previously paid Class Members based on 125% of the applicable Medicare allowed amount. Payment rates for other Emergency Services and Care, such as payments for services for which no Medicare rates are available or services that are already paid by Aetna at 239% of the applicable Medicare allowed amount shall remain subject to Aetna's existing methodology for determining the appropriate payment rates.

For the New Florida ER Fee Schedule, the applicable Medicare allowed amount will be based on the Medicare fee schedules utilized and disseminated by the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services ("CMS"). These Medicare fee schedules will be updated quarterly as CMS updates its rates. For Miami and the surrounding area that Aetna defines to be part of the Miami market, Aetna will use the "Miami" Medicare fee schedule; for Florida markets other than Aetna's Miami market, Aetna will use the "Rest of Florida" Medicare fee schedule.

Aetna's determination of whether a claim involves Emergency Services and Care and therefore requires application of the New Florida ER Fee Schedule will be based on information reflected in the claim form submitted by the provider, including any indication in the claim form that the place of service was an emergency room (i.e., a place of service code "23" on a CMS-1500 claim form) and/or the diagnosis code or CPT code indicating the diagnosis or type of service rendered. If Aetna determines that information provided in the claim form is insufficient to make either its initial determination or a determination on appeal of whether a claim involves Emergency Services and Care, then Aetna, at its election, may review and/or request from a Class Member other information concerning a claim, such as medical records, and such information shall not be unreasonably withheld.

ii. Payment of Past Claims.

In addition to Aetna's prospective business practice changes through its New Florida ER Fee Schedule, each Class Member who timely submits a valid Proof of Claim form will be entitled to a Settlement Payment for certain past claims for Emergency Services and Care that originally were submitted by the Class Member and were paid by Aetna according to its 125% of Medicare fee schedule. Specifically, for all Class Members who submit a timely and valid Proof of Claim, Aetna will conduct a reasonable, good faith search of its claims records to locate claims for Emergency Services and Care for which Aetna made payments to the Class Member during the time period June 3, 2007 to the Preliminary Approval Date based on the 125% of Medicare methodology that Aetna has agreed to change under this Agreement. Aetna will search its records based on the provider name and tax identification number listed on the Proof of Claim form.

The Settlement Payment for these claims will be calculated based on the difference between (i) the total amount Aetna originally paid that Class Member under the listed tax identification number for Emergency Services and Care and (ii) the total amount that Aetna would have paid to that Class Member, if Aetna had been using the New Florida ER Fee Schedule during the period that the Class Member originally was paid (including the Medicare fee schedule from the time the Class Member originally was paid). By way of example, if Aetna originally paid a Class Member \$125 for Emergency Services and Care by applying rates based on 125% of Medicare and if the New Florida ER Fee Schedule would have required payment of \$239 for those same services based on 239% of Medicare, then the Settlement Payment for that Class Member would be \$114.

iii. Supplemental Claims Re-Submission Process For Certain Class Members Who Were Not Part Of Aetna's National Physician Class Action Settlement

Separate from this *Weinberger* Settlement, in 2003, Aetna entered into a national physician class action settlement in *Shane v. Humana, Inc.*, MDL 1334 (S.D. Fla.). The *Shane* settlement provided for millions of dollars in settlement payments by Aetna and other agreed-upon benefits to physicians throughout the United States, as well as a broad release and covenant not to sue barring certain claims by physicians against Aetna arising on or before June 2, 2007.

Most physicians who are eligible to receive benefits under this *Weinberger* Settlement also are *Shane* settlement class members. The *Shane* settlement class covers:

[A]ny and all Physicians, Physicians Groups and Physician Organizations who provided covered services to any individual enrolled in or covered by a plan offered or administered by Aetna, Old Aetna, any other entity named as a defendant in the complaint in the Action, or by any of the current or former subsidiaries or affiliates of any of the foregoing, from August 4, 1990 through and including [June 2, 2003].

Most *Weinberger* Settlement Class Members therefore are bound by the release and covenant not to sue contained in Aetna's 2003 *Shane* settlement. However, for any *Weinberger* Settlement Class Members who are not *Shane* settlement class members—either because they opted out of the *Shane* settlement in 2003 or because they did not submit a claim to Aetna between August 4, 1990 and June 2, 2003—Aetna has established a supplemental claims re-submission procedure through the *Weinberger* Settlement.

For these physicians only, the supplemental re-submission process is available for claims for Emergency Services and Care that originally were adjudicated by Aetna between June 3, 2003 and June 2, 2007. To re-submit Emergency Services and Care claims through this process, a Class Member must certify in an addendum on the Proof of Claim form that he qualifies for this supplemental re-submission process and must attach copies of all Supporting Documentation relating to the claims for which reimbursement is sought. **For claims from the time period June 3, 2007 through December 15, 2008, Supporting Documentation is not necessary.**

c. The Release, Covenant Not to Sue, and Dismissal with Prejudice.

Subject to the Court's approval of this Agreement and the Final Judgment becoming final, each Class Member who has not timely and properly opted out of the Settlement Class and his, her or its heirs, successors, trustees, executors, administrators, principals, beneficiaries and assigns (collectively, the "Releasing Parties") agree forever to release Aetna and its current and former officers and directors, or any assigns, successor, predecessor, direct or indirect subsidiary, direct or indirect parent company, divisions, affiliates, attorneys, employees and agents, and any plan sponsors of HMO Plans that are subject to this Agreement (collectively, the "Released Parties"), from any and all claims suits, judgments, demands, rights, liabilities, damages, losses, attorneys' fees, interest, expenses, costs and causes of action, known or unknown, accrued or unaccrued, arising on or before the Preliminary Approval Date [December 15, 2008] that are, were, or could have been asserted based on or arising from the factual allegations of the Complaint or any payment by Aetna for Emergency Services and Care rendered to an HMO Plan Member outside of any contract or agreement with Aetna prior to the Preliminary Approval Date (collectively, "Released Claims").

In addition, under the Settlement, Class Members agree to accept any payment from Aetna or any other Released Parties pursuant to the New Florida ER Fee Schedule as payment in full for the Emergency Services and Care provided and agree to be bound by the Covenant Not To Sue contained relating to the New Florida ER Fee Schedule. Class Members also agree not to balance bill or otherwise seek payment from any HMO Plan Members for the difference between a Class Member's billed or submitted charge for Emergency Services and Care and the amount paid under this Agreement. Nothing in the Settlement, however, shall preclude a Class Member from collecting the amount owed by a health plan member for Emergency Services and Care under the member's plan as a copayment, deductible, or coinsurance obligation.

Each Class Member also is subject to a Covenant Not To Sue, which bars Class Members from challenging the New Florida Fee Schedule and from making other claims, as described in the Settlement Agreement.

4. WHAT WILL HAPPEN AT THE FAIRNESS HEARING?

At the Fairness Hearing, the Court will consider several different issues, including the following: (a) whether the Settlement is fair, reasonable, and adequate to members of the Settlement Class; (b) whether it should permanently certify the Settlement Class; (c) whether to enter orders that would prevent members of the Settlement Class from asserting certain claims against Aetna in the future; (d) whether to approve the application for a payment of incentive premiums to the Class Representatives by Aetna; and (e) whether to approve an application by Counsel for the Settlement Class for attorneys' fees and costs to be paid by Aetna.

5. CAN I PARTICIPATE IN THE FAIRNESS HEARING?

Anyone who objects to the Settlement, the Settlement Agreement, the application for attorneys' fees or the other matters to be considered at the Fairness Hearing may appear and present such objections. In order to be permitted to do so, however, you must, on or before April 3, 2009:

- a. File with the Court a notice of your intention to appear, together with a statement setting forth your objections, if any, to the matter to be considered and the basis for these objections, together with any documentation that you intend to rely upon at the Fairness Hearing;
- b. Serve copies of all such materials either by hand delivery or by first-class mail, postage pre-paid, upon the following counsel:

Class Counsel:

Coughlin Stoia Geller Rudman &
Robbins LLP
Paul Geller, Esq.
Stuart Davidson, Esq.
120 E. Palmetto Park Road, Ste. 500
Boca Raton, FL 33432

Counsel for Aetna:

Gibson, Dunn & Crutcher LLP
Richard J. Doren
333 South Grand Avenue
Los Angeles, CA 90071-3197

Gibson, Dunn & Crutcher LLP
Miguel A. Estrada, Esq.
Geoffrey M. Sigler, Esq.
1050 Connecticut Avenue, NW
Washington, DC 20036

If you do not comply with the foregoing procedures and deadlines for submitting written objections and/or appearing at the Fairness Hearing, you may lose substantial legal rights, including but not limited to, the right to appear at the Fairness Hearing; the right to contest approval of the Settlement or the application for an award of attorneys' fees and costs to Class Counsel; the right to contest approval of the application for an award of an incentive premium to the Class Representative; or the right to contest any other orders or judgments of the Court entered in connection with the Settlement. If the Court does not approve the Settlement, the Settlement Agreement will be null and void.

The Court may adjourn the Fairness Hearing, including the consideration of the application for attorneys' fees and expenses, without further notice of any kind other than an announcement of such adjournment in open court at the Fairness Hearing or any adjournment thereof. In addition, if no objections to the settlement are filed, the Parties may notify the Court and the Court may enter a Final Judgment without further hearing.

6. HOW DO I FILE A CLAIM?

The Settlement contemplates certain settlement payments to each Class Member that submits a timely and complete Proof of Claim to the Settlement Administrator at the following address:

Weinberger v. Aetna Health, Inc.
Settlement Administrator
PO Box 3127
Portland, OR 97208-3127

IN ORDER TO BE ENTITLED TO RECEIVE ANY PAYMENT FROM THE SETTLEMENT FUND, YOU MUST COMPLETE AND SIGN A PROOF OF CLAIM AND MAIL THE PROOF OF CLAIM TO THE SETTLEMENT ADMINISTRATOR. THE ENVELOPE CONTAINING YOUR PROOF OF CLAIM MUST BE POST-MARKED BY NO LATER THAN MAY 4, 2009. IF YOU DO NOT MAIL YOUR PROOF OF CLAIM BY THIS DEADLINE, YOU WILL BE DEEMED TO HAVE WAIVED YOUR RIGHT TO RECEIVE ANY SETTLEMENT PAYMENT. IF YOU FILE A CLAIM, YOU WILL BE ELECTING TO BE A MEMBER OF THE CLASS AND WILL BE BOUND BY ALL PROCEEDINGS, ORDERS, AND JUDGMENTS ENTERED IN CONNECTION WITH THE PROPOSED SETTLEMENT INCLUDING THE RELEASE AND DISMISSAL WITH PREJUDICE DESCRIBED ABOVE.

7. WHAT IF I DO NOT WANT TO BE PART OF THE SETTLEMENT?

If you do **not** want to be a member of the Settlement Class and participate in the Settlement, then **BY NO LATER THAN April 3, 2009**, you must send a signed statement to that effect that includes your name, business address, telephone number and federal tax identification number. The signed statement must be sent to the following:

Weinberger v Aetna Health, Inc.
Settlement Administrator
PO Box 3127
Portland, OR 97208-3127

TO BE CONSIDERED TIMELY AND TO EFFECTIVELY OPT OUT OF THE SETTLEMENT, YOUR COMPLETED SIGNED STATEMENT ADVISING OF YOUR ELECTION TO OPT OUT MUST BE POST-MARKED BY NO LATER THAN APRIL 3, 2009. IF IT IS NOT POSTMARKED BY THAT DATE, YOUR RIGHT TO OPT OUT WILL BE DEEMED WAIVED AND YOU WILL BE BOUND BY ALL ORDERS AND JUDGMENTS ENTERED IN CONNECTION WITH THE SETTLEMENT.

If you choose to opt out of the Settlement and the Settlement Class, you will not be entitled to receive the benefits of the Settlement with Aetna, including any Settlement Payment. Your claims against Aetna will not be released.

8. WHAT ABOUT ATTORNEYS' FEES AND EXPENSES?

Since the beginning of this litigation, Plaintiffs' counsel in the Action have not received any payment for their services in prosecuting the Action, nor have they been reimbursed for any out-of-pocket expenses. If the Court approves the Settlement, counsel for the Settlement Class will apply to the Court for an award of attorneys' fees, including costs and expenses. In the Settlement Agreement, Aetna has agreed not to oppose such an application in the aggregate amount of up to \$4,000,000 in fees and costs. If the Court awards Plaintiffs' attorneys' fees and expenses in an amount no greater than that amount, Aetna will pay the amount awarded by the Court to Plaintiffs' counsel. This payment is in addition to the consideration to the members of the Settlement Class that is described above and will not reduce the amount available to members of the Settlement Class if the Settlement is approved.

9. WHAT IS THE CLASS REPRESENTATIVE'S INCENTIVE AWARD?

In addition to the application for attorneys' fees and expenses described in the preceding section, in connection with the Court's consideration of the Settlement, the Class Representatives each intend to seek an award from the Court in the amount of up to \$7,500, which, if awarded, would be in addition to the settlement consideration that will be available to members of the Settlement Class. In the Settlement Agreement, Aetna has agreed not to oppose such an application up to \$7,500. If the Court awards the Class Representatives up to that amount, Aetna will pay such amounts.

10. WHO CAN I CONTACT WITH QUESTIONS?

If you have questions regarding this Notice, the Settlement, or the Action generally, you can obtain additional information from Class Counsel:

Coughlin Stoia Geller Rudman & Robbins LLP
Paul Geller, Esq.
Stuart Davidson, Esq.
120 E. Palmetto Park Road, Ste. 500
Boca Raton, FL 33432
(561) 750-3000

PLEASE DO NOT CALL THE COURT OR THE CLERK'S OFFICE.

11. REQUEST TO FORWARD THIS NOTICE.

If you would be a member of the Settlement Class described in this notice, but you have assigned any claims that might be covered by the Settlement or be released as described above, or if you are aware of a Class Member who has moved to a different address, please forward this Notice to the appropriate person as soon as possible.

Dated February 2, 2009.

BY ORDER OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA