

February 2015: Health Net Settlement Update

Summary of Key Dates

By Order dated **January 30, 2015**, the Honorable Faith S. Hochberg, United States District Court Judge for the District of New Jersey, preliminarily approved a Proposed Amendment to the Health Net Settlement. That Proposed Amendment is discussed below. The Court's Order contains the following dates:

February 24, 2015: Objections to the proposed Amendment, if any, must be postmarked on or before this date. In addition, requests to be excluded must also be postmarked on or before this date. Further information about objecting and requests for exclusion may be found in the Notice of Amendment.

March 3, 2015: date of a Settlement Hearing to be held at 9 A.M. before the Honorable Faith S. Hochberg at the U.S. District Court for the District of New Jersey, located at 50 Walnut Street in Newark, N.J. 07102. You do not need to come to this hearing.

April 10, 2015: deadline for postmarking claims mailed to the Claims Administrator.

Background

In June and July 2013, payments were mailed to eligible claimants from the settlement fund in the Health Net Class Action (*McCoy v. Health Net, Inc.* Civil Action No. 03-1801 (FSH) in the United States District Court for the District of New Jersey).

The following is intended to provide Class members with information regarding the underlying lawsuit, the claims process, allocation of the settlement funds to claimants, additional payments that will likely be made in the future, and recent case developments.

The Lawsuit and Settlement

The Health Net Class Action was brought on behalf of subscribers of Health Net, Inc., and its affiliated companies ("Health Net"), who asserted that Health Net failed to properly pay for out-of-network health care services.¹ When the case was settled in 2008, Health Net agreed to (a) create a \$160 million cash settlement fund to pay Class members' claims for unpaid benefits proportionally or "*pro rata*" (called "Group A" claims) as well as lawyers' fees and expenses; (b) pay \$15 million to the Class through the New Jersey Department of Banking & Insurance; (c) make business practice changes to address Plaintiffs' complaints; (d) make up to \$40 million available to Class members who could prove to Health Net that they got and paid "balance bills" received from medical providers (called "Group B" claims), and to discharge a portion of Class members'

¹ The Class was represented by the law firms of Wilentz Goldman & Spitzer, P.A. and Pomerantz LLP ("Class Counsel").

balance bills proven to still be owed (called “Group C” claims). The 2008 Settlement Agreement can be found at the website.

Further details regarding the lawsuit, the persons covered, and the Settlement, are available at the Berdon Claims Administration website at www.berdonclaims.com under Health Net Class Action Litigation.

In August 2008, the Court approved the Settlement as fair, reasonable, and adequate, and awarded attorneys’ fees and expenses that were paid from the Cash Settlement Fund. The balance of the Settlement funds was invested in Treasury bonds and other government-backed instruments, with interest accruing to the benefit of the Class. The Cash Settlement Fund, plus interest, less court-awarded fees and expenses, is hereinafter referred to as the “Net Cash Settlement Fund.”

Disputes Arising During the Claims Administration and Resolution Thereof

During 2008-2011, the Parties disputed whether Health Net was too stringent in judging Group B and Group C claims, and offset too much money from their payouts; whether approximately 20,000 Health Net subscribers for “Administrative Services Only” (“ASO”) should have been included in the notice; and how to address the fact that approximately 8,000 eligible Class members were left off the notice mailing list and the fact that approximately 51,000 Class members were provided incomplete or incorrect claims-related information.

In 2012, former Magistrate Judge John Hughes helped the Parties mediate and reach an agreement in which Health Net would pay an additional \$6.25 million in exchange for a release from all disputes between the Parties. This includes a release from Health Net’s obligation to pay any more of the up to \$40 million that it was obligated to pay to proven Group B claimants than already paid (about \$936,000). Altogether, Class Counsel believe there will be enough money to pay a fair share to all eligible claimants. This agreement is known as the Amendment to the Settlement Agreement. On December 23, 2014, Class Counsel submitted to the Court a Motion For Preliminary Approval of the Amendment to Settlement Agreement and Implementation Thereof.

Timing of Distribution of the Settlement Funds

In the opinion of Class Counsel, these claims administration-related disputes needed to be substantially resolved before the Settlement Funds could be distributed, particularly because certain rejected Group B claims on the Prove-Up Fund could still be entitled to participate in the Net Cash Settlement Fund. Until it was determined how many of those claims were entitled to recovery under the Prove-Up Fund, it was uncertain how many would spill over to the Net Cash Settlement Fund. Moreover, there was further uncertainty regarding how many new claims would be filed once the approximately 70,000 additional notices are mailed.

The Court was notified of the outcome of the mediation on February 6, 2012, at which time Class Counsel also sought the Court's guidance regarding distribution of the Net Cash Settlement Fund. On April 20, 2012, Class Counsel filed a motion and proposed order requesting approval of the Agreement and the *pro rata* distribution of the Net Cash Settlement Fund. On June 5, 2012, the Court held a hearing on these matters.

By Order entered on May 29, 2013, the Court postponed consideration of the Agreement pending appointment of a Special Master to review its terms and other settlement administration-related matters.

On June 3, 2013, the Court ordered Class Counsel to distribute at least one-half of the Net Settlement Fund. On August 13, 2013, the Court appointed Paul H. Zoubek, Esq. as Special Master to investigate the disputes between Class Counsel and Health Net, and the delays in the administration of the Settlement. The areas of inquiry ordered by the Court were thoroughly investigated by Special Master Zoubek for nearly 13 months, from August 20, 2013, until the Special Master filed with the Court his Report and Recommendation on September 12, 2014.

On October 3, 2014, Class Counsel and Health Net filed motions asking the Court to affirm or adopt the Special Master's Report and Recommendation, and Settlement Claims Administrator Berdon Claims Administration filed a Statement of Non-Objection to the Special Master's Report and Recommendation.

On December 23, 2014, Class Counsel filed a Motion for Preliminary Approval of the Amendment to Settlement Agreement and Implementation Thereof.

By Orders dated January 30, 2015, the Court (1) preliminarily approved the Amendment to Settlement Agreement and Implementation Thereof; and (2) granted both Class Counsel and Health Net's motions that asked the Court to affirm or adopt the Special Master's Report and Recommendation.

2013 PAYMENTS

In July 2013, 56% of the net cash (\$50 million) was distributed to partially pay the Group A claims, leaving about \$39.2 million in the Cash Settlement fund. Health Net paid about \$936,000 in Group B claims and had arranged the discharge of \$290,000 in Group C claims.

Group A Claims - No Documents Required

Pursuant to the Court's June 3, 2013, Order, Class Counsel (having consulted with the Claims Administrator) distributed approximately 56% of the Net Cash Settlement Fund. Class Members who filed Group A claims that were deemed eligible and valid by the Claims Administrator ("Group A Allowed Claims") received their *pro rata* share of 56% of the Net Cash Settlement Fund, based on the amount of their Group A Allowed Claims relative the total amount of Group A Allowed Claims.

To the extent that a claimant previously received a payment from the \$15 million fund administered by the DOBI, such payment was deducted from the amount payable from the Net Cash Settlement Fund.

Group B Claims - Paid a Balance Bill

Class Members who filed Group B Allowed Claims received 100% of their Group B Allowed Claims, minus deductions required by the Settlement Agreement, in amounts determined by Health Net's claims administrator.

There were a significant number of Group B Claims either (1) whose rejection by Health Net was disputed by Berdon and Class Counsel, or (2) that were allowed by Health Net but Class Counsel believe should receive more money than allowed by Health Net's claims administrator. These issues were presented to the Mediator and resolved as part of the Amendment to the Settlement Agreement. Those claims will be paid upon approval of the Amendment To The Settlement Agreement by the Court, if at all.

Group C Claims - Owe A Balance Bill

As noted above, Health Net arranged the discharge of \$290,000 in Group C claims. There were approximately \$97,000 worth of previously filed Group C Claims that Health Net rejected for failure to properly indicate the claim category in Section 6 of the underlying Blue Sheets. However, in August 2012, Berdon Claims Administration reviewed all claims and deemed those claims payable. Those claimants were therefore paid a *pro rata* portion of their claims during the June 2013 partial distribution.

Final Payments

As noted above, Class Counsel and Health Net disputed whether approximately 20,000 Health Net subscribers for "Administrative Services Only" ("ASO") should have been included in the notice and how to address the fact that approximately 8,000 eligible Class members were left off the notice mailing list and that approximately 51,000 Class members were provided incomplete or incorrect claims related information. If the Court approves the Amendment after a hearing, all payments -- including payments to resolve these issues -- will be mailed after any new claims are processed and any appeals are resolved, if they can be resolved. This takes time. Please be patient.

Additional Inquiries

IF YOU HAVE ANY OTHER QUESTION, PLEASE CONTACT:

BERDON CLAIMS ADMINISTRATION AT 800-766-3330.