

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Master File No. 00-1334-MD-MORENO
Tag-Along Case No. 06-20249-CIV-MORENO

IN RE: MANAGED CARE LITIGATION

JEREMY S. WEINBERGER, M.D., and DR.
JEREMY S. WEINBERGER, M.D., PA, a Florida
Professional Service Corporation, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

AETNA HEALTH, INC., a Pennsylvania
corporation,

Defendants.



FINAL APPROVAL ORDER AND JUDGMENT

THIS CAUSE came before the Court upon the Joint Motion for Settlement (**D.E. No. 66**),
filed on **April 8, 2009**.

THE COURT has considered the motion and the pertinent portions of the record, and being
otherwise fully advised in the premises, it is

ADJUDGED that the motion is GRANTED.

By an Order of Preliminary Approval of Settlement Agreement dated December 15, 2008
(DE 60), this Court preliminarily approved the proposed Settlement by the parties based on the terms
and conditions of the Settlement Agreement (the "Settlement" or "Agreement"), subject to further
consideration at a Final Fairness Hearing to be conducted on April 15, 2009. In its Order of

Preliminary Approval, the Court conditionally certified the above-styled case to proceed as a class action for settlement purposes only and temporarily certified the Class Representatives as representatives of the following class:

Any and all Physicians, Physician Groups and 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 Court also ordered that the Notice of Proposed Settlement attached as Exhibit A to the Agreement, including the Proof of Claim in substantially the form attached as Exhibit C to the Agreement, be mailed by first -class mail, postage pre-paid to all potential members of the class to the extent that such Class Members could be identified consistent with the procedures in the Preliminary Approval Order and Settlement. The Court also ordered the publication of the Notice in the local newspapers in Miami, Tampa, Orlando, and Jacksonville.

The Court also explained that any class member could appear in person at the Final Fairness Hearing to object to the Settlement, but that no person would be heard unless they filed with the Court and the Parties' counsel a timely notice of such person's intention to appear and a statement setting forth such person's objections. No timely objections were filed.

The Court scheduled a Final Fairness Hearing for April 15, 2009 to determine, among other things: (a) whether the proposed Settlement on the terms and conditions provided in the Agreement is fair, reasonable, and adequate; and (b) whether final judgment should be entered dismissing this Action on the merits, with prejudice, and without costs, except as otherwise provided in the Agreement.

This Court has duly considered all of the submissions and arguments presented on the proposed Settlement. After due deliberation and for the reasons set out below, this Court has fully

and finally determined that the Settlement is fair, reasonable, and adequate for purposes of the Federal Rules of Civil Procedure and should therefore be approved. Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that the Settlement Agreement (DE 60 Exhibit 1) be and the same is hereby approved, adopted and ratified by the Court as follows:

1. The Court has jurisdiction over the subject matter of the Action pursuant to 28 U.S.C. §§ 1331 and 1367, and all acts within the Action, and over all the parties to the Action, and all Class Members.

2. In its prior Order of Preliminary Approval of Settlement Agreement (DE 60), the Court provided to Class Members an opportunity to appear before it on April 15, 2009 and object to the Settlement if timely notice of intent to so object was filed. In reaching its decision in this case, this Court considered the parties' Settlement Agreement, the parties' joint motion for final approval and supporting exhibits, the Court file in this case, and the presentations by Class Counsel on behalf of the Plaintiffs and counsel for the Defendant in support of the fairness, reasonableness, and adequacy of the Settlement.

3. The Class conditionally certified in the Order of Preliminary Approval of Settlement Agreement (DE 60) has been appropriately certified, for settlement purposes, under Rules 23(a), 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure.

4. Certification for settlement purposes is appropriate under Rule 23(a) because: (i) the Class is so numerous that joinder of all Class Members is impracticable; (ii) there are questions of law or fact common to the Class; (iii) the claims or defenses of the Representative Plaintiffs are typical of the claims of the Class; and (iv) the Representative Plaintiffs will fairly and adequately

protect the interests of the class.

5. Certification for settlement purposes is appropriate under Rule 23(b)(2) because Aetna has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

6. Certification for settlement purposes is appropriate under Rule 23(b)(3) because questions of law or fact common to all Class Members predominate over any questions affecting only individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. In making this determination, the Court has considered the interest of the Class Members in individually controlling the prosecution of separate actions and the extent and nature of any litigation concerning this controversy already commenced by Class Members. The Court notes that because certification of the Class is in connection with the Settlement rather than litigation, it need not consider the desirability of concentrating the litigation of the claims in this particular forum or the manageability presented by certification of the nationwide class proposed in the Complaint in this Action. *See Strube v. American Equity Investment Life Ins. Co.*, 226 F.R.D. 688, 695 (M.D. Fla. 2005) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)).

7. Class Counsel has fairly and adequately represented the Class for purposes of entering into and implementing the Settlement.

8. In the Order of Preliminary Approval, the Court preliminarily approved the Notice and found that the proposed form and content of the Notice to the Class Members satisfied the requirements of the Federal Rules of Civil Procedure and due process. The Court reaffirms that finding and holds that the best practicable notice was given to Class Members under the

circumstances and constitutes due and sufficient notice of the Settlement and the Final Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement or the Final Fairness Hearing.

9. The parties timely caused the Notice to be mailed to each of the Class Members, as well as through local newspapers in Miami, Tampa, Orlando, and Jacksonville. The Notice advised Class Members of, among other things, the allegations in the complaint, the terms of the proposed settlement, the requirements including deadlines, for objections to the Settlement, and the scheduled April 15, 2009 Final Approval Fairness Hearing. The Notice further identified Class Counsel. The Notice also set forth in full the claims released by Class Members as part of the Settlement, and advised Class Members in bold face to read the Notice carefully because it would affect their rights if they failed to timely object to the Settlement.

10. The Court finds that the Settlement is fair, reasonable, and adequate and should be approved. In making this determination, the Court has considered factors that include: a) the likelihood that the Plaintiffs would prevail at trial; b) the range of possible recovery if the Plaintiffs prevailed at trial; c) the fairness of the Settlement compared to the range of possible recovery, discounted for the risks associated with the litigation; d) the complexity, expense and duration of the litigation; e) the substance and amount of opposition to the Settlement; and f) the stage of proceedings at which the Settlement was achieved. *Bennett v. Behring Corp.*, 737 F.2d 982 (11th Cir. 1984); *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195 (5th Cir. 1981). The Court has considered the submissions of the parties, and the discovery conducted in this case, along with the Court file, all of which show that there remains substantial risk and uncertainty in the Plaintiffs ultimately prevailing on their claims. Given the considerable uncertainty, the Court finds it in the

best interests of the Class Members to be presented with the benefits available directly to the Class and summarized as follows:

A. The Settlement creates a settlement fund for Class Members to recover up to 100% of the difference between the amounts paid to them for emergency services and care by Defendant based on 125% of the Medicare allowable amount and the amounts that would have been paid based on 239% of the Medicare allowable amount for the period June 3, 2007 through the date of Preliminary Approval (and, for certain Class Members, the opportunity to re-submit claims for the time period June 3, 2003 through June 2, 2007, for payment using the same calculation).

B. The Defendant has increased its payment rate to 239% of the Medicare allowable amount for services provided after December 15, 2009 until December 14, 2012.

C. The Settlement included the right to opt out, so that any Class Member could decline to participate in the Settlement.

D. The Settlement provides for a claim dispute resolution process; and

E. In addition to the foregoing, the Settlement requires that Defendant pay for Notice, claims administration, and Class Counsel fees and costs up to \$4,000,000.

11. If the case were to proceed without settlement, the Court notes that the litigation and possible resulting trial would be complex, lengthy and very expensive. The Settlement eliminates a substantial risk that the Class would walk away “empty-handed” after the conclusion of such appeals and/or trial. Further, the Defendant has defended this action vigorously and, absent a settlement, by all indications would continue to do so. Because of the resulting motion practice, trial and appeals, it could be years before Class Members would see any recovery, even if they were to prevail on the merits. *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 543 (S.D. Fla. 1988), *aff'd* 899 F.2d 21 (11th Cir. 1990). The Court is satisfied that the settlement fund is of substantial value to the Class.

12. The Court finds that there were no timely objections filed to the Settlement.

13. In addition to finding the terms of the proposed Settlement to be fair, reasonable, and adequate, the Court determines that there was no fraud or collusion between the parties or their counsel in negotiating the Settlement's terms, and that all negotiations were made at arms-length. Furthermore, the terms of the Settlement make it clear that the process by which the Settlement was achieved was fair. Finally, there is no evidence of unethical behavior, want of skill or lack of zeal on the part of Class Counsel.

14. The Court hereby approves as timely filed, the Requests for Exclusion of the Settlement Class Members referenced in the class settlement opt-out list (DE 62), and finds that they are not bound by any terms of this Judgment and shall not participate in the proceeds of the Settlement or receive any benefits under it.

15. This Order shall be binding on all Class Members, excluding all those who timely filed valid requests for exclusion, and all such Class Members hereby release and discharge the "Released Parties" from all "Released Claims," as those terms are defined in the Settlement Agreement preliminarily approved by this Court in its prior Order of Preliminary Approval of Settlement Agreement (DE 60).

16. 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 assignee, 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 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"). The Settlement Members are hereby barred and permanently enjoined from asserting any of the Released Claims against the Released Parties in any court or forum whatsoever, and Case No. 06-20249-CIV-MORENO is hereby DISMISSED on the merits, with prejudice and without costs to any party except as specifically provided in this Final Approval Order and Judgment and in the Settlement Agreement. Nothing in this paragraph or the Settlement Agreement is intended to relieve any person or entity that is not a Released Party from responsibility for its own conduct or the conduct of other persons or entities who are not Released Parties.

17. The Releasing Parties are permanently enjoined from: (a) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, administrative or regulatory proceeding or order in any jurisdiction based on any or all Released Claims against one or more Released Parties; (b) instituting, organizing class members in, joining with class members in, amending a pleading in or soliciting the participation of class members in, any action, including but not limited to a purported class action, in any court against one or more Released Parties based on, involving, or incorporating, directly or indirectly, any or all Released Claims, and (c) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise) or receiving any benefits from any lawsuit, administrative or regulatory proceeding or order in any jurisdiction based on an allegation that Aetna's compliance with the

provisions of the Settlement Agreement violates any legal right of any member of the Class.

18. The Court finds that the law firms approved as Class Counsel are competent and experienced attorneys and have adequately and aggressively represented the interests of the Class. The Court therefore certifies and appoints the law firms of Lee & Amtzis, P.L., Coughlin Stoia Geller Rudman & Robbins LLP, Spector Roseman, Kodroff & Willis, P.C., Kopelman & Blankman, P.A., Patrick Lawlor, P.A., and Hall Joseph & Lamb, P.A.

19. The Court hereby certifies JEREMY S. WEINBERGER, M.D., P.A. and PETER F. MERKLE, M.D., P.A. as Class Representatives of the Class herein defined. The terms of the Settlement provide that Defendant will pay an incentive award to each of the named Class Representatives, of up to \$7,500. The Court finds that the payment by Defendant of a \$7,500 incentive award is reasonable. JEREMY S. WEINBERGER, M.D., P.A. and PETER F. MERKLE, M.D., P.A. therefore do have and recover an incentive award in the amount of \$7,500 each from Defendant, for all of which let execution issue.

20. Capitalized terms used in this Final Approval Order and Judgment not otherwise defined herein have the meaning assigned to them in the Settlement Agreement (DE 60 Exhibit 1).

21. In contemplation of the dismissal with prejudice of such actions after this Order becomes final, all proceedings are stayed as to Aetna or any other Released Party who is a defendant in any action brought by or on behalf of members of the Class that asserts any claim that as of the date of this Order would constitute a Released Claim that has been, or will in the future be assigned to this Court; *provided, however*, that this stay in contemplation of dismissal shall not apply to any such action to the extent that a named plaintiff has timely elected to opt-out of the Settlement and the Class.

22. Neither the Settlement Agreement nor any provision therein, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of any of the Class Representatives, Class Counsel, any members of the Class, Aetna, or any other Released Party or person of any liability or wrongdoing by them, or that the claims and defenses that have been or could have been, asserted in the Action are or are not meritorious, and this Order, the Settlement Agreement or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Class Representatives, any member of the Class or any other person has or has not suffered any damage; *provided, however*, that the Settlement Agreement, this Order and the Judgment to be entered thereon may be filed in any action by Aetna or any Released Party seeking to enforce the Settlement Agreement or the Judgment by injunctive or other relief, or to assert defenses including, but not limited to, *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The terms of the Settlement Agreement and this Order and the Judgment shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that are subject to the Release and other prohibitions that are maintained by, or on behalf of, the Releasing Parties or any other Person subject to those provisions of this Order.

23. In the event that the Settlement Agreement does not become effective or is canceled or terminated in accordance with the terms and provisions of the Settlement Agreement, then this Order and the Judgment shall be rendered null and void and be vacated and all orders entered in connection therewith by this Court shall be rendered null and void.

22. The Clerk of this Court is directed to enter the Judgment in the form attached to this Order dismissing the Action with prejudice as to Aetna pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

23. Without affecting the finality of this Final Approval Order and Judgment, this Court reserves continuing and exclusive jurisdiction over all matters relating to the administration, implementation, effectuation and enforcement of the Settlement Agreement (DE 60 Exhibit 1) and this Final Approval Order and Judgment. All other pending motions are DENIED AS MOOT.

DONE AND ORDERED in Open Court at Miami, Florida, this 15 day of April, 2009.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:
Counsel of Record

Nyla Libhart

From: cmecfautosender@flsd.uscourts.gov

Sent: Friday, April 17, 2009 2:30 PM

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Subject: Activity in Case 1:06-cv-20249-FAM Weinberger, et al v. Aetna Health, Inc. Order on Motion for Settlement

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Southern District of Florida

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ORDER GRANTING [66] Motion for Settlement. Signed by Chief Judge Federico A. Moreno on 4/15/2009. (jr)

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