

NOTICE OF CLASS ACTION SETTLEMENT

United States District Court for the District of North Dakota Southwestern Division

A court authorized this notice. This is not a solicitation from a lawyer.

- A class action settlement has been reached in a lawsuit arising from the North Dakota Department of Human Services' recovery of third-party payments to Medicaid recipients.
- Medicaid recipients who remitted a portion of a third-party settlement payment to the North Dakota Department of Human Services may be eligible to receive a partial refund of the amount remitted to the Department.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:	
Submit a Valid Form By: 60 days following the mailing of this Notice.	The only way to get a refund.
Exclude Yourself By: 60 days following the mailing of this Notice.	Get no refund. Maintain the right to bring a lawsuit against the North Dakota Department of Human Services.
Object By: February 5, 2010	Write to the Court about why you like or you do not like the settlement.
Go to a Hearing on: February 12, 2010	Speak to the Court about the fairness of the settlement.
Do Nothing	Get no payment. Give up rights.

- The rights and options – **and the deadline to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if you submit a valid claim and the settlement is approved by the Court and upheld if there are any appeals. Please be patient.

1. Why did I get this notice?

You are receiving this notice because you have been identified as a possible member of a class consisting of (1) Medicaid recipients who, (2) between February 9, 2005 and February 13, 2009, (3) received third-party settlement payments (4) where the settlement did not identify the amount allocated to medical care and services and (5) where the Medicaid recipient remitted a portion of the settlement to the Department.

DATE NOTICE MAILED: _____

2. What is this lawsuit about?

This case was brought because Plaintiffs alleged the North Dakota Department of Human Services (Department) improperly demanded and received recovery from the proceeds of third-party benefits obtained by Medicaid recipients. Plaintiffs believe the Department recovered proceeds of third-party benefits obtained by Medicaid recipients in violation of federal law, as interpreted by *Arkansas DHHS v. Ahlborn*, 547 U.S. 268 (2006). The Department believes its recovery of proceeds of third-party benefits obtained by Medicaid recipients did not violate the law.

3. What are third-party settlements payments?

A third-party settlement payment is money received by a Medicaid recipient from another person or company to settle a claim or lawsuit. An example of a third-party settlement payment is a payment received from an insurance company for injuries suffered in an automobile accident.

4. What is a class action?

Class actions are lawsuits in which the claims and rights of many people are decided in a single court proceeding. A Representative Plaintiff (“Class Representative”) is named in the lawsuit to represent the claims of the entire class. This avoids the necessity for a large number of people to file similar individual lawsuits and enables the court system to resolve similar claims in an efficient and economical way. Class actions provide a way for people with similar claims to be treated alike. In a class action, the court is the guardian of class interests and supervises the prosecution of the class claims by class counsel to assure that the representation is adequate. Class members are not individually responsible for the costs or fees of counsel.

5. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendants in this case. Class Counsel investigated the facts and applicable law regarding the claims and Defendants’ defenses. The parties engaged in lengthy and “arms-length” negotiations in reaching this settlement. The Class Representative and Class Counsel believe the proposed settlement is fair, reasonable, and adequate and in the best interests of the class. Both sides agree that by settling, Defendants are not admitting any liability or that they did anything wrong, but both sides want to avoid the uncertainties and high costs associated with litigation of this type.

6. What does the Settlement provide?

Under the terms of the Settlement, the Department will refund to eligible Medicaid recipients the amount of the third-party payment received by the Department in excess of 40% of the gross third-party settlement. The “gross third-party settlement” is the entire amount of the settlement received by the Medicaid recipient, before any deductions such as attorney’s fees or a payment to the Department.

7. What are my options?

You can do nothing at all. If you do nothing at all, you will receive no refund from this settlement. You also release any claims you may have regarding the legal issues in this case.

You can submit a claim. If you submit a claim and are eligible, you will receive a refund. You also release any claims you may have regarding the legal issues in this case. To submit a claim follow the steps listed at No. 8 below

You can exclude yourself from the settlement. If you exclude yourself from the settlement, you get no refund. You maintain the right to bring a lawsuit against the Department regarding the claims made in this lawsuit. To exclude yourself from the settlement you must follow the steps listed at No. 10, below. If you do not want a payment from this settlement, but you want to keep the right to sue the Department regarding the legal claims in this case, then you must take steps to get out of the settlement. This is called excluding yourself or opting out of the Class.

You may object to the settlement. You can write the Court and tell it that you do not agree with the Settlement. To object to the Settlement in writing you must follow the steps listed at No. 12, below. You can also attend a court hearing and tell the Court why you object to the settlement. Information regarding the court hearing is in No. 14 below.

8. How can I get my refund?

To qualify for a refund, you need to complete the enclosed Proof of Claim Form and submit the form to the address indicated below. **Your claim form must be postmarked no later than 60 days from the date this notice was mailed.** Once your claim is processed, if you are entitled to a refund, the Department will mail you a check within 30 days of the Court approving the Settlement and after any appeals are resolved. The address to mail your completed claim form to is:

North Dakota Department of Human Services
Attn: Galen Hanson
600 East Boulevard Avenue, Department 325
Bismarck, ND 58505-0250

If your address changes from the address at which you received this notice, please send a letter to the North Dakota Department of Human Services (above address) with your new address.

9. Will my refund impact my eligibility for government benefits?

Your refund may impact your eligibility for Medicaid or other government benefits. You may want to contact your eligibility worker to determine what, if any, impact your refund will have on your eligibility for Medicaid or other government benefits.

10. Can I get out of the settlement?

You may request exclusion from this settlement. If you request exclusion from the settlement, you will not be eligible for a refund of a portion of the amount of your third-party payment you remitted to the Department, but you will preserve any rights you would otherwise have to sue Defendants. **A request to be excluded from this Settlement must be postmarked no later than 60 days from the date this notice was mailed.** To request to be excluded from the Settlement, mail a signed statement to the North Dakota Department of Human Services (address in No. 7 above) containing the following language or words to the same effect:

I exercise my right not to participate in the settlement in the lawsuit known as *Delacerda v. North Dakota Department of Human Services*, Civil No. 1:08-cv-00046. By choosing not to participate in the settlement, I understand that I will not be eligible for a potential refund of a portion of the amount of my third-party payment I remitted to the North Dakota Department of Human Services, but that I am preserving any rights that I otherwise would have to sue the North Dakota Department of Human Services.

11. If I do not exclude myself, can I sue the Department for the same thing later?

No. If you do not exclude yourself you give up the right to sue the Department for the claims this Settlement resolves. The lawsuit releases any and all claims based on the Department's demand or receipt of proceeds from third-party benefits obtained by Medicaid recipients from February 9, 2005 through February 13, 2009.

12. Can I support or object to the Settlement?

You can tell the Court you like the settlement or you do not agree with the settlement or some part of it.

You can write the Court and state you approve of the settlement or some part of it. You can also write the Court to object to the settlement if you do not like any part of it. You can give reasons why you think the Court should approve the settlement or not approve it. The Court will consider your views. To object, you must send a letter saying you object to the proposed settlement in *Delacerda v. North Dakota Department of Human Services*, Civil No. 1:08-cv-00046. Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement. Mail the objection to these three different places postmarked no later than February 5, 2010:

Court
Clerk of Court
220 East Rosser Avenue
Bismarck, ND 58502

Class Counsel
Craig A. Boeckel
Pagel Weikum Law Firm
1715 Burnt Boat Drive, Madison Suite
Bismarck, ND 58503

Defense Counsel
Douglas A. Bahr
ND Office of Attorney General
500 North 9th Street
Bismarck, ND 58501

13. What is the difference between objecting and excluding?

Objecting is formally telling the Court you do not like something about the settlement and you believe the settlement should be rejected. You can object only if you stay in the Class. Excluding yourself is telling the Court you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

14. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend the Fairness Hearing and you may ask to speak, but you do not have to.

The Honorable Daniel L. Hovland will hold a Fairness Hearing at 10:00 a.m. on February 12, 2010, in courtroom at the William Guy Federal Building, 220 East Rosser Avenue, Bismarck, ND 58502.

At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Hovland will listen to people who ask to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. If the Court approves the settlement, payments for approved claims will be mailed when the decision becomes final. If the Court does not approve the settlement, then the parties will continue to litigate the case in Court.

You do not have to come to the Fairness Hearing. Class Counsel will answer any questions Judge Hovland may have. But you are welcome to come to the Fairness Hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend the Fairness Hearing, but it is not necessary.

15. Do I have a lawyer in this case?

The Court has appointed the Pagel Weikum Law Firm and the Dickson Law Firm as Class Counsel. The Court has appointed the following attorneys as "Class Counsel":

Jeffrey S. Weikum
Craig A. Boeckel
Pagel Weikum Law Firm

Address:
1715 Burnt Boat Drive, Madison Suite
Bismarck, ND 58503
(701) 250-1369 Phone
(701) 250-1368 Fax

jweikum@pagelweikum.com
cboeckel@pagelweikum.com

Thomas A. Dickson
Dickson Law Office

Address:
107 W. Main Ave., Suite 150
Bismarck, ND 58502
(701) 222-4400 Phone
(701) 258-4684 Fax

tdickson@dicksonlaw.com

Class Counsel represents the interests of the Class, and you will not be charged for their services. Any refund you receive will not be reduced by the payment of fees, expenses, or court costs to Class Counsel. You may hire your own attorney to advise you, but if you hire your own attorney, you will be responsible for paying the attorney's fees.

16. Are there more details about the Settlement?

This Notice is only a summary. For a more detailed statement of the matters involved in the Lawsuit or the Settlement, you may, during regular business hours, refer to the papers filed in this Lawsuit at the office of the Clerk of the Court, United States District Court for the District of North Dakota, 220 East Rosser Avenue, Bismarck, North Dakota 58502. File: ***Delacerda v. North Dakota Department of Human Services, Civil No. 1:08-cv-00046.***

A copy of the full Settlement Agreement and the pleadings (Complaint, Answer) are posted at www.nd.gov/dhs/info/publicnotice/index.html under the date December 10, 2009.

17. How do I get more information?

You can call or write Class Counsel at the addresses provided in No. 15 above. **Please do not contact the Court for information.**

Dated: December 10, 2009

Honorable Daniel L. Hovland
United States District Judge
United States District Court for the District of North Dakota