

UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Jeanette Delacerda,  
n/k/a Jeanette Sanderson,  
On Behalf of Herself and All  
Others Similarly Situated,

Plaintiffs,

vs.

North Dakota Department of Human  
Services; Carol Olson, Individually and  
as Director of the North Dakota  
Department of Human Services;  
Annette Bendish and Galen Hanson,  
in their individual and official capacities,

Defendants.

**SETTLEMENT AGREEMENT**

**Civil No. 1:08-cv-00046**

.....

This Class Action Settlement Agreement is made and entered into this 30<sup>th</sup> day of November, 2009, by and among Jeanette Delacerda, n/k/a Jeanette Sanderson, on behalf of herself and the Settlement Class, and Defendants the North Dakota Department of Human Services; Carol Olson, Individually and as Director of the North Dakota Department of Human Services; Annette Bendish, in her individual and official capacity; and Galen Hanson, in his individual and official capacity, to settle, fully and finally, all of the Claims that have been or could have been brought in this lawsuit on behalf of Jeanette Delacerda and the Settlement Class against the Defendants.

**RECITALS**

The following recitals form the basis of this Agreement:

On or about April 23, 2008, Plaintiffs commenced a civil action against the Department. The Complaint alleges the Department improperly demanded and received recovery from the proceeds of third party benefits obtained by Medicaid recipients.

The Department denied and continues to deny any wrongdoing or liability of any kind to Plaintiffs and asserts numerous defenses to the claims asserted by Plaintiffs.

The Parties conducted a thorough examination and investigation of the facts and law relating to the claims in the Action.

The Parties recognize the costs and risks associated with this litigation.

The Parties have examined and considered the benefits to be provided to the Settlement Class Members under this Agreement, and believe the Settlement to be in the best interest of the Settlement Class Members, taking into account the benefits provided to the Settlement Class Members through the terms of the Settlement, the risks of litigation, and the potential recovery by Settlement Class Members.

The Parties now wish to fully and finally settle and resolve all of the claims that were raised or could have been raised in this Action on the terms and conditions set forth in this Agreement.

## **AGREEMENT**

### **A. Definitions.**

As used in this Agreement, the following terms have the meanings set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

1. Action. "Action" means the civil action commenced by Plaintiffs, on or about April 23, 2008, in the United States District Court, District of North Dakota, Southwestern Division, Civil No. 1:08-cv-00046.

2. Agreement. "Agreement" means this Settlement Agreement and all attachments.

3. Claim Form. "Claim Form" means a form in substantially the same form as attachment B.

4. Claims. "Claims" means all known claims, during the Class Settlement Period, regarding the Department's demand for or receipt of recovery from the proceeds of third party benefits obtained by Medicaid recipients.

5. Claims Administration. "Claims Administration" means the preparation and mailing of the Settlement Notice and Claim Form; receipt, processing, and payment of Claims received from Settlement Class Members; and preparation of a Status Report for Class Counsel.

6. Claims Administrator. "Claims Administrator" means the North Dakota Department of Human Services.

7. Claims Period. "Claims Period" means the time period during which Class Members may submit claims, which is 60 days from the date of the mailing of the Settlement Notice and Claim Form to the Class Member.

8. Class Counsel. "Class Counsel" means Craig A. Boeckel and Jeffrey S. Weikum of the Pagel Weikum Law Firm, and Thomas A. Dickson of the Dickson Law Office.

9. Class Counsel Fees. "Class Counsel Fees" means the attorney's fees in the amount of \$35,000.00 that will be paid to Class Counsel as part of the resolution of this Action.

10. Class Members. "Class Members" means all persons that fall within the Settlement Class.

11. Class Representative. "Class Representative" means Jeanette Delacerda, n/k/a Jeanette Sanderson.

12. Class Settlement Period. "Class Settlement Period" means the period from February 9, 2005 through February 13, 2009, the day the Department ceased sending the correspondence of which Plaintiffs complain.

13. Costs of Claims Administration. "Costs of Claims Administration" means all actual costs associated with or arising from the Claims Administration.

14. Department. "Department" means the North Dakota Department of Human Services; Carol Olson, Individually and as Director of the North Dakota Department of

Human Services; Annette Bendish, in her individual and official capacity; and Galen Hanson, in his individual and official capacity.

15. **Effective Date.** “Effective Date” means the first date that is three business days after all the following have occurred: (1) The Court entered its Final Approval Order; (2) the time for any challenge to the Settlement, both in the Court and on appeal, has elapsed; and (3) the Settlement has become final, either because no timely challenge was made to it or because any timely challenge has been finally adjudicated and rejected.

16. **Fairness Hearing.** “Fairness Hearing” means the hearing at which the Court will consider and decide whether to enter the Final Approval Order.

17. **Final Approval Order.** “Final Approval Order” means an order from the Court that: (1) grants final approval of certification of the Settlement Class, designation of Jeanette Delacerda as the representative of the Class Representative, and designation of Class Counsel as counsel for the Settlement Class; (2) grants final approval of this Agreement as fair, reasonable, and adequate to the Settlement Class; (3) releases all Released Claims; (4) dismisses with prejudice all claims, causes of action, and counts alleged in the Action; (5) authorizes the payment by the Department of Valid Claims; (6) authorizes the payment of the Class Counsel Fees; (7) preserves the Court’s continuing jurisdiction over enforcement of this Agreement; and (8) provides any other rulings contemplated by this Agreement.

18. **Opt-Out Statement.** “Opt-Out Statement” means a signed statement by a Class Member 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 the 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.

To be valid an Opt-Out Statement must be received within the Claim Period.

19. Parties. "Parties" means Jeanette Delacerda, on behalf of herself and the Settlement Class, and the Department.

20. Preliminary Approval Order. "Preliminary Approval Order" means an order that (1) preliminarily approves the terms of this Agreement as fair, reasonable, and adequate to the Settlement Class; (2) conditionally certifies the Settlement Class; (3) designates Jeanette Delacerda as the representative of the Settlement Class; (4) designates Class Counsel as counsel for the Settlement Class; (5) approves the form, content, and method of notice to be given to the Settlement Class; (6) approves the procedures and timeline for Class Members to exclude themselves from (opt-out of) the Settlement; (7) enters a protection order protecting confidential information included in the Status Reports, and (8) approves the procedures and timeline for individuals to object to the Settlement or certification of the Settlement Class.

21. Released Claims. "Released Claims" means any and all claims, actions, causes of action, administrative claims, demands, debts, damages, suits, costs, interests, expenses, attorney's fees, compensation, sums of money, obligations, judgments, or liabilities, state or federal, in law or in equity, known or unknown, contingent or absolute, that the Releasors have or, absent this Agreement, may in the future have had, against the Releasees, for, or by reason of the claims that were or could have been asserted in the Action and all claims relating in any way to or existing by reason of the facts, circumstances, events, occurrences, acts, omissions, or failures to act, of whatever kind or character whatsoever, alleged or referred to in all of the pleadings in connection with the Action. Releasors expressly, knowingly, and voluntarily waive the provisions of section 9-13-02 of the North Dakota Century Code , which provides:

**Extension of known claims.** A general release does not extend to claims which the creditor does not know or suspect to exist in the creditor's favor at the time of executing the release, which if known by the creditor, must have materially affected the creditor's settlement with the debtor.

22. Releasees. "Releasees" means the Department and the State of North Dakota, as well as all and each of its departments, boards, bureaus, commissions, councils, committees, agencies, institutions, industries, enterprises, and offices, as well as its assigns, officers, employees, and agents, in both their official and individual capacities.

23. Releasers. "Releasers" means Jeanette Delacerda and the Settlement Class Members, their assigns, heirs, agents, administrators, trustees, and any other representatives, as well as all other persons authorized to bring the Action or to share in the recovery on their behalf.

24. Settlement. "Settlement" means the agreement by the Parties to resolve this Action, the terms of which are memorialized and provided in this Agreement.

25. Settlement Class. "Settlement Class" means: (1) Recipients of Medicaid who, (2) during the Class Settlement Period, (3) received third-party settlement payments (4) where the settlement did not identify the amount allocated to medical care and services and (5) the Medicaid recipient remitted a portion of the settlement to the Department.

26. Settlement Class Members. "Settlement Class Members" means all persons who are members of the Settlement Class who (1) were mailed or re-mailed a Settlement Notice and Claim Form that was not returned as undeliverable and (2) do not exclude themselves from the Settlement Class in the manner and time prescribed by the Court in the Preliminary Approval Order.

27. Settlement Notice. "Settlement Notice" means a form in substantially the same form as attachment A.

28. Status Report. "Status Report" is a list of Settlement Class individuals and their address, the date the Notice of Claim and Claim Form were mailed to Settlement Class individuals, whether the Notice of Claim and Claim Form mailed to a Settlement Class individual were returned as undeliverable, whether a Settlement Class individual

submitted a Claim Form, whether the Claim Form was deemed a Valid Claim, the basis for any Claim not being deemed a Valid Claim, and the amount of any refund mailed to any Settlement Class Member. Status reports will be provided approximately every 30 days until this Action is concluded, starting 30 days after the Settlement Notices and Claim Forms are mailed under Section C(2).

29. Valid Claim. "Valid Claim" means a claim form (1) submitted within the Claim Period, (2) signed by the Settlement Class Member, (3) containing the information and documentation required by the Claim Form, and (4) the information and documentation demonstrates the Settlement Class Member is entitled to a refund under this Agreement.

**B. Conditional Certification of Settlement Class.**

For the purposes of implementing this Agreement, and for no other purpose, the Department stipulates to the conditional certification of the Settlement Class. If for any reason this Agreement does not become effective, the Department's stipulation to certification of the Settlement Class will be null and void, and the Parties will return to their respective positions in this Action as those positions existed before the execution of this Agreement.

**C. Settlement Approval Procedures.**

Promptly after execution of this Agreement by all Parties:

1. The Parties will file this Agreement and a joint motion seeking entry of the Preliminary Approval Order.
2. Within 30 days of the Court entering a Preliminary Approval Order, the Department will mail, by regular mail, a copy of the Settlement Notice and Claim Form to the last known address on file with the Department for each Class Member.
3. On or before February 5, 2010, objections to certification of the Settlement Class, designation of the Class Representative, the appointment of Class Counsel, the Settlement, or any aspect of the Agreement, together with all supporting

memoranda and other material, must be filed with the Court and served on Class Counsel and the Department's counsel.

4. The Fairness Hearing will take place at 10:100 a.m. on February 12, 2010, in a courtroom at the William Guy Federal Building, 220 East Rosser Avenue, Bismarck, ND 58502.

5. At the Fairness Hearing the Parties will jointly request the Court enter the Final Approval Order. The Parties will make good faith efforts, consistent with the terms of this Agreement, to promptly obtain the Final Approval Order.

6. If the Court does not enter either the Preliminary Approval Order or the Final Approval Order, the Parties will use reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not enter the Preliminary Approval Order and Final Approval Order, the Parties will return to their prior positions in the Action, in accordance with paragraph B of this Agreement.

**D. Notice, Claims, and Relief to Settlement Class.**

1. The Parties agree that the mailed Settlement Notice and Claim Form provide to the Settlement Class sufficient information to inform members of the Settlement Class of the essential terms of this Agreement, appropriate means for obtaining additional information regarding the Agreement and the Action, appropriate information about the procedure for challenging or excluding themselves from the Settlement, if they wish to do so, and appropriate means for and information about submitting a Claim for a refund under the terms of this Agreement.

2. Within 30 days of the Court entering a Preliminary Approval Order, the Department will mail, by first-class U.S. mail, a copy of the Settlement Notice and Claim Form to the last known address on file with the Department for each Class Member. If a mailed envelope is returned to the Department with a forwarding address, the Department will re-mail the Settlement Notice and Claim Form to the forwarding address. If a mailed

envelope is returned to the Department without a forwarding address, the Department will make reasonable efforts to locate the Class Member's address. If the Department locates an address for the Class Member, the Department will re-mail the Settlement Notice and Claim Form to that address. The date the Settlement Notice and Claim Form are re-mailed to the Class Member is deemed the date of mailing for purposes of determining the Claims Period.

3. Class Members will have 60 days from the date of the mailing of the Settlement Notice and Claim Form to the Class Member to return to the Claims Administrator a Valid Claim. Class Members are deemed to have timely returned the Claim Form if the Claim Form is postmarked no later than 60 days following the mailing of the Settlement Notice and Claim Form, or if the Claims Administrator actually receives the completed Claim Form no later than 60 days following the mailing of the Settlement Notice and Claim Form. If an incomplete Claim Form is returned to the Department, the Department will send a letter to the Class Member, copied to Class Counsel, explaining what information or documentation is required for the Claim Form to be deemed complete. The Class Member will have 45 days from the date of the mailing of the letter to send the information or documentation required to complete the Claim Form.

4. Settlement Class Members who submit a Valid Claim will be refunded the amount of the third-party payment received by the Department from the Settlement Class Member in excess of 40% of the documented gross third-party settlement.

5. A Class Member may request exclusion from this Settlement. A Class Member who wishes not to participate in this Settlement must return an Opt-Out Statement to the Claims Administrator. The Opt-Out Statement must be returned to the Claims Administrator within the Claims Period. Class Members are deemed to have timely returned the Opt-Out Statement if the Opt-Out Statement is postmarked no later than 60 days following the mailing of the Settlement Notice and Claim Form, or if the

Claims Administrator actually receives the Opt-Out Statement no later than 60 days following the mailing of the Settlement Notice and Claim Form.

6. Within 30 days of the Effective Date, the Department will mail refund checks to Class Members who submitted a Valid Claim. If a Class Member timely submits a Valid Claim after the Effective Date, the Department will mail a refund check to the Class Member within 30 days of receiving the Valid Claim.

7. Costs of Claims Administration will be paid by the Department.

**E. Settlement with Jeanette Delacerda**

Jeanette Delacerda will remit to the Department \$10,000 of her third party settlement.

**F. Releases**

1. By executing this Agreement, the Parties acknowledge that, upon entry of the Final Approval Order by the Court, the Action will be dismissed with prejudice, an order of dismissal with prejudice will be entered, and all Released Claims will thereby be conclusively settled, compromised, satisfied, and released as to the Releasees.

2. The Final Approval Order will provide for and effect the full and final release of all claims, actions, causes of action, administrative claims, demands, debts, damages, suits, costs, interests, expenses, attorney's fees, compensation, sums of money, obligations, judgments, or liabilities, state or federal, in law or in equity, known or unknown, contingent or absolute, that Releasers have or, absent this Agreement, may in the future have had, against the Releasees, for, or by reason of the claims that were or could have been asserted in the Action and all claims relating in any way to or existing by reason of the facts, circumstances, events, occurrences, acts, omissions, or failures to act, of whatever kind or character whatsoever, alleged or referred to in all of the pleadings in connection with the Action.

3. Releasers agree to defend, indemnify, and hold harmless the Releasees from any indemnity, contribution, equitable allocation, subrogation, or similar action(s),

claim(s), and/or lawsuit(s) that may be brought by Releasors against the Releasees in connection with damages due to the allegations made in this Action.

4. Notwithstanding the above, the Court will retain jurisdiction over the Parties and the Agreement with respect to the performance of the terms of the Agreement.

**G. Class Counsel Attorney's Fees**

1. Class Counsel will receive attorney's fees in the amount of \$35,000.00 from the Department. The attorney's fees will be paid by check and delivered to Class Counsel within 30 days of the Effective Date. Neither Class Counsel nor Plaintiffs will receive any other compensation, costs, or reimbursement from the Department aside from the \$35,000.00.

2. Except for the attorney's fees provided in paragraph G(1), the Parties will bear their own costs related to this Action.

**H. Miscellaneous Provisions**

1. This Agreement is the compromise of doubtful and disputed claims, and this Agreement and the attachments are not, and are not to be construed or deemed to be, an admission of wrongdoing, fault, or liability on the part of the Department regardless of whether this Agreement results in entry of a Final Approval Order. The Department denies liability and merely intends to avoid litigation. This provision survives the expiration or voiding of the Agreement.

2. This Agreement is entered only for purposes of settlement. In the event the Final Approval Order is not entered, this Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Agreement will have any effect and the Parties will be restored to their prior positions as if this Agreement had not been entered. In the event the Final Approval Order is not entered, this Agreement, any draft of the Agreement, and any discussion, negotiation, or documentation of the Parties' settlement discussions will not be admissible in evidence for any purpose, or used for any

purposes whatsoever in the Action. This provision survives the expiration or voiding of the Agreement.

3. At either Party's option, expressed in written notice to the other Party, this Agreement will become null and void, and no obligation on the part of any of the Parties will accrue, if (1) the Court declines to certify the Settlement Class; (2) the Court materially alters any of the terms of this Agreement; or (3) the Court does not enter the Preliminary Approval Order or the Final Approval Order.

4. No breach of any provision of this Agreement can be waived by any undersigned party unless in writing. Waiver of any one breach by an undersigned party will not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement.

5. All of the attachments to this Agreement are material and integral parts hereof, and are fully incorporated by reference.

6. This Agreement and the attachments constitute the entire, fully integrated agreement among the Parties and cancel and supersede all previous written and unwritten agreements and understandings pertaining to the settlement of the Action.

7. There are no covenants, promises, undertakings or understandings outside of this Agreement other than as specifically set forth herein.

8. In the event any party is required to bring any action against the other party to enforce the terms of this Agreement, the prevailing party in such an action shall be entitled to recover from any other party all reasonable and necessary attorneys' fees, costs, and expenses.

9. This Agreement shall be governed by the substantive laws of the State of North Dakota without regard to conflicts of law principles.

10. The drafting of this Agreement, including its attachments, has been by mutual agreement after negotiations, with consideration by and participation of all Parties and their counsel. Since this Agreement was drafted with the participation of all Parties

and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each Party was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Agreement, and there was no disparity in bargaining power among the Parties to this Agreement.

11. This Agreement does not toll any applicable statute of limitations.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the separate counterparts.

13. The headings of the sections of this Agreement are for convenience only and may not be deemed a part of the Agreement or to affect its construction.

14. Each of the undersigned parties acknowledges that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement. Each of the undersigned parties also acknowledges and represents that they have been represented by counsel in connection with their respective considerations and the execution of this Agreement. Each undersigned party further represents and declares that in executing this document they have relied solely upon their own judgment, belief, and knowledge and the advice and recommendation of their own independently selected counsel concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing this document by the representations or statements except those referred to or contained in this document.

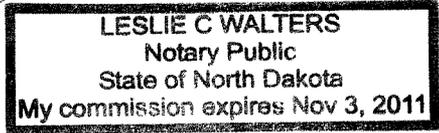
Dated this 27<sup>th</sup> day of November, 2009.

Jeanette Malnouie  
Jeanette Delacerda,  
n/k/a Jeanette Sanderson

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF BURLEIGH     )

On the 27<sup>th</sup> day of November, 2009, the foregoing instrument was acknowledged before me.

Leslie C. Walters  
Notary Public



Dated this 24<sup>th</sup> day of November, 2009.

Brenda M Weisz for  
The State of North Dakota  
By: Carol K. Olson  
Its: Executive Director of the  
Department of Human Services

Dated this 30<sup>th</sup> day of November, 2009.

Douglas A. Bahr  
The State of North Dakota  
By: Douglas A. Bahr  
Its: Solicitor General

Dated this 27<sup>th</sup> day of November, 2009.

By: Jeffrey S. Weikum  
Jeffrey S. Weikum (ID #05344)  
PAGEL WEIKUM PLLP  
1715 Burnt Boat Drive  
Madison Suite  
Bismarck, North Dakota 58503  
Phone: (701) 250-1369  
Fax: (701) 250-9269  
email: [jweikum@pagelweikum.com](mailto:jweikum@pagelweikum.com)

Craig Boeckel (ID #04625)  
PAGEL WEIKUM PLLP  
1715 Burnt Boat Drive  
Madison Suite  
Bismarck, North Dakota 58503  
Phone: (701) 250-1369  
Fax: (701) 250-9269  
email: [cboeckel@pagelweikum.com](mailto:cboeckel@pagelweikum.com)

Thomas A. Dickson (ID #03800)  
Dickson Law Office  
Tuscany Square  
107 W. Main, Suite 150  
P.O. Box 1896  
Bismarck, ND 58502-1896  
Phone: (701) 222-4400  
Fax: (701) 258-4684  
Email: [tdickson@dicksonlaw.com](mailto:tdickson@dicksonlaw.com)

Attorneys for Plaintiff.

e:\dixie\cl\bahr\risk management\open cases\sanderson\settlement agreement(3).doc

## 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 9<sup>th</sup> 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](mailto:jweikum@pagelweikum.com)  
[cboeckel@pagelweikum.com](mailto: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](mailto: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](http://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

**Delacerda v. North Dakota Department of Human Services  
Civil No. 1:08-cv-00046**

**PROOF OF CLAIM FORM**

You are eligible to receive a refund of a portion of the third-party settlement payment you remitted to the North Dakota Department of Human Services if:

1. You were a recipient of Medicaid;
2. From February 9, 2005 through February 13, 2009 you received a third-party settlement payment;
3. The settlement did not identify the amount allocated to medical care and services;
4. You or your attorney remitted a portion of the settlement to the North Dakota Department of Human Services;
5. The amount of the settlement remitted to the North Dakota Department of Human Services is more than 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 North Dakota Department of Human Services.

To receive a refund, you must fill out this claim form and return it to:

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

**Your claim form must be postmarked no later than 60 days from the date the Notice of Class Action Settlement was mailed to you. That date is on the bottom, right-hand corner of the Notice of Class Action Settlement.**

1. PERSONAL INFORMATION				
Last Name:	First:	Middle:	Suffix:	Other Names Used:
Social Security Number or Medicaid ID Number:			Date of Birth: / / Month Date Year	
Street address/PO Box:			Phone Numbers: ( ) - Home ( ) - Cell	
City:		State:		Zip Code:

**2. THIRD-PARTY SETTLEMENT INFORMATION**

Date of Your Injury:	Amount of Your Gross Third-Party Settlement:
/ / Month      Date      Year	\$ _____

**3. DOCUMENTATION**

PROVIDE A COPY OF THE SETTLEMENT AGREEMENT, STIPULATION FOR SETTLEMENT, STIPULATION OF DISMISSAL, OR OTHER DOCUMENT EVIDENCING (1) THE DATE OF YOUR INJURY AND (2) THE AMOUNT OF YOUR GROSS THIRD-PARTY SETTLEMENT. (IF YOU DO NOT HAVE THIS DOCUMENTATION YOU MAY BE ABLE TO GET IT FROM THE ATTORNEY WHO REPRESENTED YOU).

**YOUR CLAIM WILL NOT BE PROCESSED UNLESS YOU PROVIDE DOCUMENTATION OF THE GROSS THIRD-PARTY SETTLEMENT AND THE DATE OF INJURY.**

**4. CERTIFICATION**

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT AND THAT THE ENCLOSED DOCUMENT IS A TRUE AND CORRECT COPY OF THE DOCUMENT IT PURPORTS TO BE.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**5. SUBMITTING THE CLAIM**

**MAIL THE CLAIM FORM AND DOCUMENTATION TO:**

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

You may wish to keep a copy of this form and the documentation for your records.