

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Medco Health Solutions, Inc., Pharmacy Benefits Management Litigation

This document relates to:

Gruer v. Merck-Medco Managed Care, L.L.C., No. 97 Civ. 9167 (CLB);
Green v. Merck-Medco Managed Care, L.L.C., No. 98 Civ. 0847 (CLB);
Bellow v. Merck-Medco Managed Care, L.L.C., No. 98 Civ. 4763 (CLB);
Janazzo v. Merck-Medco Managed Care, L.L.C., No. 99 Civ. 4067 (CLB);
and *O'Hare v. Merck-Medco Managed Care, L.L.C.*, No. 01 Civ. 3805 (CLB).

MDL No. 1508

**NOTICE OF CERTIFICATION OF SUBCLASS, AMENDMENT TO SETTLEMENT AGREEMENT
AND SECOND SETTLEMENT HEARING**

TO: Employee welfare benefit plans that (1) are Class Members (as hereinafter defined); (2) submitted identification forms in response to a prior Notice of Pendency of Class Action, Proposed Class Settlement and Hearing; and (3) identified themselves as paying for prescription drugs primarily on an insured or capitated basis.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
AN AMENDMENT TO THE SETTLEMENT OF THIS CLASS ACTION LITIGATION
THAT AFFECTS YOU HAS BEEN PROPOSED.**

Previously, a document entitled Notice of Pendency of Class Action, Proposed Class Settlement and Hearing or Second Notice of Pendency of Class Action, Proposed Class Settlement and Hearing (the "Notice") was mailed to you. The Notice described a proposed settlement of this class action lawsuit brought under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq., and advised you of the terms of the proposed settlement and related matters. Class Members were defined in the Notice as

All employee welfare benefit plans that have or have had contracts with Medco,¹ whether directly or indirectly (including through third party administrators, HMOs, insurance companies, Blue Cross Blue Shield entities or other intermediaries (collectively, "TPAs")), where the contracts with Medco were both (a) in force at any time between December 17, 1994, and the date of the final approval of the Settlement contemplated by the Settlement Agreement, as amended, and (b) subject to ERISA.

In order to participate in the settlement, Class Members were required to submit identification forms that were appended to the Notice. You are receiving this Notice because you submitted an identification form identifying yourself as a member of the Class in this class action lawsuit. On your identification form, you checked a box indicating that your Plan has paid for prescription drug benefits primarily through payment of a premium or based on a fixed, per member charge (e.g., on an insured or capitated basis). In the alternative, you might have failed to properly identify the basis on which your plan paid for prescription drug benefits.

Several Class Members, and others who were not members of the Class, objected to the terms of the settlement and presented their objections to the District Court. The District Court overruled those objections and approved the settlement on May 25, 2004, on the terms described in the Notice.

After the settlement was approved by the District Court, certain of the Class Members who had objected to the settlement appealed the approval of the settlement, and other related matters, to a higher court, the United States Court of Appeals for the Second Circuit (the "Second Circuit"). The Second Circuit sent the case back to the District Court for further proceedings. Specifically, the Second Circuit remanded the case to the District Court for certification of a subclass made up of employee welfare benefit plans that paid for prescription drugs primarily based upon the volume and type of drugs dispensed to plan members ("self-funded plans"). The Second Circuit

¹ "Medco" refers to Medco Health Solutions, Inc. or its predecessors and/or affiliates, as appropriate.

also remanded the case for reconsideration of the allocation of the settlement proceeds and specific factual findings regarding the plan of allocation of the Settlement Fund as between self-funded and insured plans.

On March 13, 2008, the District Court certified a subclass consisting of all members of the Class that were self-funded plans. The Court appointed as class representatives of the subclass the Central States Southeast and Southwest Areas Health and Welfare Fund, the Iron Workers Tri-State Welfare Fund and Sweetheart Cup Company. Each of these Class Members has been an active participant in this litigation since late 2003, when each objected to the original settlement. The Court also appointed the Coleman Law Firm and the law firm of Pavalon, Gifford & Laatsch as counsel for the subclass of self-funded plans. Insured plans continue to be represented by the law firms of Abbey Spanier Rodd & Abrams, LLP and Boies, Schiller & Flexner LLP.

After the case was remanded to the District Court, counsel for the self-funded plan subclass and the insured plan subclass engaged in lengthy and vigorous negotiations and determined that an amendment to the original settlement was warranted. On March 31, 2008, the parties signed the Second Amendment to the Settlement Agreement (the "Second Amended Settlement").

CHANGES TO THE SETTLEMENT AGREEMENT

The Second Amended Settlement is substantially the same as the settlement described in the Notice. The change made to the settlement is designed to allocate the proceeds of the settlement equitably across the subclasses pursuant to the Second Circuit's ruling.

The Notice provided as follows:

if your Plan pays for prescription drug benefits on an insured or capitated basis (e.g., a fixed premium or per-member, per-month sum) or if your Plan does not participate in any brand-to-brand therapeutic interchange program administered by Medco, your proportionate share of the total drug spend will be reduced by fifty-five percent (55%) to reflect the fact that your Plan could not have been damaged directly by certain of the conduct that Plaintiffs allege increase costs to Plans.

Representatives of the self-funded plans argued to the Second Circuit that insured plans suffered no harm as a result of the alleged misconduct of Medco because insured plans pay a fixed or capitated rate to insurance companies or to Medco itself for prescription drug benefits. Specifically, counsel for the self-funded subclass asserted that, in these instances, the insurer or Medco bore the risk of claims for prescription drug costs and that changes in practices by Medco in providing drug benefits did not affect the premiums that insurers charged to insured plans.

Because the Second Circuit determined that (1) the "District Court's conclusion that the 55% discount to the insured plans was fair, reasonable and adequate did not rest on any specific factual findings or adequately explain how it accounted for the difference in these relationships" and (2) that "the new subclass containing only self-funded Plans will be better able to assert any challenge to the discount with the benefit of independent counsel," there was a meaningful chance that, on remand, the District Court could rule that the insured plans sustained no damages as a result of Medco's alleged conduct. In order to preserve benefits of the settlement for the insured plans, counsel for the insured plan subclass negotiated with counsel for the self-funded plan subclass regarding the allocation of the Settlement Fund.

After arduous negotiations, counsel for the respective subclasses have agreed that the proportionate share of the total drug spend of insured plans will be reduced by 85% rather than the 55% as provided by the original settlement. During these negotiations, counsel for the self-funded plans maintained that there was no evidence that insured and capitated plans' insurance companies would necessarily have reduced their premiums if Medco passed on rebates received from drug manufacturers. Counsel for the insured plans maintained its previously expressed position that Medco's alleged misconduct affected insured plans, albeit indirectly, resulting in increased premiums.

INSTRUCTIONS

YOU NEED NOT TAKE ANY ACTION IN RESPONSE TO THIS NOTICE. If you have not previously excluded yourself from this Settlement and you do nothing, you will receive the benefits to which you are entitled pursuant to the amended terms of the settlement, if approved by the District Court.

If you previously submitted an identification form, but now wish to exclude your plan, please mail a letter postmarked no later than May 13, 2008, requesting exclusion to the Claims Administrator at the following address:

Medco ERISA Settlement
c/o Complete Claim Solutions, LLC
P.O. Box 24612
West Palm Beach, FL 33416

Your request for exclusion must include the following information: Plan Name and Address, and a Contact Name, Address, Phone Number, Fax Number and Email. If your Plan contracted directly with Medco, please provide the date range of services and your Medco carrier numbers or bill code assigned to your Plan. If Medco provided services to your Plan through one or more TPAs, please identify for each TPA: the identity of the TPA; Date range(s) of services; Medco carrier number(s) or bill code(s) applicable to your Plan; Medco contract numbers applicable to your Plan (if the carrier number(s) did not apply exclusively to your Plan); Medco group number(s) applicable to your Plan if the contract number(s) did not apply exclusively to your Plan; other identifying information (e.g., policy number, etc.) to the extent you do not have or cannot obtain your Plan's Medco carrier, contract, and/or group numbers. In the alternative, you may append a copy of the identification form that you submitted in response to the previous Notice to your letter requesting exclusion.

Please sign your exclusion request and indicate the capacity in which you are signing (e.g., Plan fiduciary, Plan Sponsor).

If you wish to object to the amendment to the plan of allocation contemplated by the Second Amended Settlement, and have not excluded yourself from the Class, you must file a written objection with the Clerk of the Court on or before May 6, 2008 and simultaneously serve copies of your objection by mail on counsel to Medco (James P. Tallon, Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022), counsel for the insured plans (Karin E. Fisch, Abbey Spanier Rodd & Abrams, LLP, 212 East 39th Street, New York, New York 10016 and Edward Normand, Boies, Schiller & Flexner, LLP, 333 Main Street, Armonk, New York 10504), and counsel for the self-funded plans (Kenneth P. Ross, Coleman Law Firm, 77 West Wacker Drive, Suite 4800, Chicago, Illinois 60601).

Any objection should refer to this lawsuit and must include your name, address, the specific reason that you are objecting to the Second Amended Settlement and any legal authority for your objection. If you plan to appear at the Settlement Hearing to present your objection, your submission should indicate that you intend to appear. If you do not appear at the Settlement Hearing, the Court will read and consider your objection based on your written submission.

HEARING ON THE AMENDED SETTLEMENT

The Court will hold a hearing on May 20, 2008, at 9:30 a.m. in Courtroom 218 of the United States District Court for the Southern District of New York before the Honorable Charles L. Brieant. At this hearing, the Court will determine whether the Second Amended Settlement should be approved as fair, reasonable and adequate. No aspect of the settlement other than the change in the Plan of Allocation will be considered by the Court at this hearing because all other aspects of the settlement, including the size of the Settlement Fund, the disclosures and changes in practices agreed to by Medco and the award of attorneys' fees have been approved by the Second Circuit and are not subject to further amendment or review. No additional attorneys' fees are being sought by plaintiffs' counsel beyond those contemplated by the original settlement.

The hearing may be continued without further notice. It is not necessary for you to appear at the hearing.

ADDITIONAL INFORMATION

Copies of documents relevant to the settlement, including the Notice, the Second Amended Settlement and the decision of the Second Circuit, are available on the Internet at www.erisasettlement.com.

Pleadings and other records in the lawsuit also may be examined at any time during regular business hours at the Office of the Clerk of the United States District Court for the Southern District of New York.

If you need additional information concerning the change to the settlement, you may contact counsel for the self-funded plans or counsel to the insured plans by writing to them at the addresses listed above.

YOU SHOULD NOT CALL OR WRITE TO THE CLERK OF THE COURT.

MEDCO ERISA SETTLEMENT
C/O COMPLETE CLAIM SOLUTIONS, LLC
P.O. BOX 24612
WEST PALM BEACH, FL 33416

IMPORTANT COURT DOCUMENT