

First State Orthopaedics v. Concentra
United States District Court, Eastern District of Pennsylvania

Concentra Settlement Opt-Out Instructions

Background. The proposed settlement [“Settlement”] of a class action lawsuit that may affect a large number of physicians has recently been announced. The Settlement involves claims brought by some orthopedic surgeons in a class action lawsuit in the federal district court in Philadelphia, PA against Concentra, Inc., Concentra Managed Care, Inc. and Focus Health Care Management, Inc. The defendants provide PPO network and medical bill review and other cost containment services to insurance companies that pay medical benefits on account of workers’ compensation and automobile accident injuries.

The court has preliminarily approved the Settlement and will decide whether to give final approval after a fairness hearing scheduled for October 19, 2006. Physicians who want to object to the proposed Settlement or to opt out of the plaintiff class (i.e. be excluded from the Settlement) must act before September 12, 2006. Physicians who wish to participate in the Settlement do not need to take any action.

The terms of the Settlement , the court ordered formal notice of the proposed Settlement, and the release that will be required of all class members who do not opt out of the Settlement can be found at <http://www.billreviewsuit.com>. Questions about the Settlement can be directed to the plaintiffs’ attorney, Gogel & Gogel, at 413-788-5683.

AMA Objections. Almost immediately after the lawsuit was filed, the parties agreed to settle the case in a proposed nationwide settlement applicable to every physician who has had any workers compensation or auto accident bill repriced by any of the Concentra defendants.

Prior to the Settlement’s being preliminarily approved by the court, the AMA (together with several state medical societies) expressed a number of concerns to the attorneys for the settling parties. The AMA also made its objections known to the court. Notwithstanding some changes that the parties have made, the AMA continues to believe the Settlement is unfair to physicians. Briefly, the Settlement provides:

- No damage payments;
- A promise by the defendants that, over a four year period, they will spend “over” \$3.7 million to effect certain changes in their business practices.
- No provision for enforcement by the physician members of the class [there is a requirement that the defendants provide a “certification” to plaintiffs’ class counsel and the court that they are in compliance].
- Every physician in the plaintiff class who does not opt-out of the Settlement will be required to release a broad array of claims against the defendants.
- The defendants will pay up to \$425,000 in legal fees to the attorneys for the plaintiff class who negotiated the Settlement (along with costs and expenses of up to \$15,000), with the exact amount to be approved by the court.

The court has scheduled a fairness hearing for October 19, 2006. The AMA intends to reiterate the objections it has previously brought to the attention of the court: the Settlement is unfair to physicians inasmuch as the defendants' promised changes in their business practices are illusory, incapable of verification and, in any event, inadequate to redress the damages alleged to have been incurred by physicians as a result of defendants' alleged unfair claims repricing activities.

There is no certainty that the court will deny final approval of the Settlement. Indeed, experience indicates that courts are unlikely to change course once they have granted preliminary approval of a class action settlement. However, a sizable number of "opt-outs" (i.e. persons who indicate that they wish to be excluded from the Settlement) may lend weight to the AMA's objections.

The only way physicians can avoid the impact of the release, which will apply to all class members should the Settlement be finally approved, is to opt-out of the Settlement.

Opt-out Instructions. Physicians who believe they have been substantially aggrieved by the Concentra defendants' unfair claims repricing practices should review the Settlement, consult with their personal counsel and consider whether to opt-out from the Settlement.

To be effective, a request to opt-out must be postmarked no later than September 12, 2006 and mailed to:

Bill Review Exclusions
P.O. Box 3560
Portland, OR 97208

A sample opt-out request follows. Be sure to include your name, address, and telephone number and sign the form. Keep a copy for your files.

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I want to be excluded from this class action lawsuit.

Name: _____

Address: _____

Telephone Number: _____

Signature: _____

