

CMA Encourages California Physicians to Opt-out of Inadequate Concentra Settlement

Settlement Background. Most California physicians have likely received a one-page notice headed “Medical Providers may be affected by a proposed class action settlement.” This notice refers to a recent settlement of a lawsuit by some orthopedic surgeons in Pennsylvania against Concentra, Inc., Concentra Managed Care, Inc. and Focus Health Care Management, Inc. These Concentra defendants provide PPO networks and medical bill review and other cost containment services to insurance companies that pay medical benefits for workers’ compensation and automobile accident injuries. The lawsuit makes two principal claims:

1. Silent PPO Activity—that defendants sold PPO lists and discounts without the physicians’ knowledge and without providing patient steerage required by the physicians’ contracts.
2. Unfair Repricing Activity—that defendants used biased repricing software or improperly calculated UCR charges to unfairly recommend to payors of medical claims that they reduce their payments to physicians.

Almost immediately after the lawsuit was filed, the parties agreed to settle the case in a nationwide settlement applicable to a class of healthcare providers, which includes virtually every physician in the country who has had any workers compensation or auto accident bill repriced by any of the Concentra defendants. In response to the significant concerns as to the inadequacy of the Settlement expressed by numerous medical associations, including the AMA and CMA, the Settlement was revised to remove some of its objectionable features.

Inadequate Settlement Terms. However, as preliminarily approved by the court, this Settlement still provides very little relief to aggrieved physicians. Specifically, the Settlement provides:

- No damage payments;
- A promise by the defendants that, over a four year period, they will spend over “over” \$3.7 million (less than \$1 million per year) as follows:
 - No automatic downcoding of E&M Codes;
 - More detailed “Explanation of Review” forms to include patient name, date of service, payor information, charges billed, name of network discount applied and detailed payment information;
 - A provider website that includes “a list of state fee schedules, and usual and customary rate data, rules, bundling and editing data,” but not “proprietary data”;
 - Investment in defendants’ internal quality assurance programs, including a process to confirm the validity of third party billed charges data used to derive UCR rates and communicate any discrepancies to their clients, and a \$1.25 million increase in spending to educate their payor clients about steerage opportunities and best steerage practices;
 - Giving contracting physicians the right to obtain a copy of their contracts, and to terminate those contracts on 120-days written notice (although defendants take no responsibility if the physician “fails to provide written notice of all applicable tax identification numbers or fails to identify all of the networks that provider is a member of that participate in the defendants’ PPO networks.); and
 - An internal dispute system where calls are answered within one minute, “commercially reasonable efforts” are made to “provide a response” to questions or appeals within 21-days, and disclosure is made of “any documentation made available to Defendants that describes the methodology for the data used by the Defendants to propose the charges for that given health care service or supply.
- The only enforcement of these provisions is a requirement that the defendants provide a “certification” to Class Counsel and the Court that they are in compliance. There is no provision for enforcement by the physician members of the Class, as is provided in the RICO Settlements.

- In return to this modest relief, every member of the class (estimated to include approximately 300,000 physicians) will be required to give up virtually all legal claims they may have against these defendants, in conjunction with those entities' workers compensation or auto insurance network leasing or bill review and repricing activities. Only claims that defendants violated a state regulatory scheme that specifically regulate workers compensation or automobile injury PPOs are excluded.

For a copy of the full settlement and court ordered notices, go to www.billreviewsuit.com.

AMA Objections. The AMA believes that the proposed settlement is unfair to physicians. The AMA filed objections to the Settlement before the court preliminarily approved it. The court has scheduled a final fairness hearing for October 19, 2006 in Philadelphia, and the AMA intends to object again at this hearing. The AMA will reiterate the objections it has made to date: that the defendants' promised changes 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 Silent PPO and unfair claims repricing activities.

Although the AMA will object, there is no certainty that the judge will deny final approval of this Settlement. Indeed, experience indicates courts are unlikely to change course once they have granted preliminary approval of a class-action settlement.

Opt-out Protection Available. Because this Settlement provides **little or no meaningful relief**, and because the only way physicians may avoid the **sweeping release** which will apply to all Class Members should this Settlement be finally approved is to opt-out, physicians who believe they have been substantially aggrieved by Concentra's alleged Silent PPO or unfair claims repricing practices and want to retain their rights to pursue these claims **should request to be excluded** from this lawsuit.

Opt-out Instructions. To be effective, your request to "opt-out" of the Concentra Settlement 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.

First State Orthopaedics v. Concentra Inc.
Case No. 2:05-CV-04951-NS

I want to be excluded from this Class Action lawsuit.

Name: _____

Address: _____

Telephone Number: _____

Signature: _____