

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Miami Division

MDL NO.: 1334

IN RE:
MANAGED CARE LITIGATION

THIS DOCUMENT RELATES TO
PROVIDER TRACK CASES ONLY

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION WITH THE
PRUDENTIAL INSURANCE COMPANY OF AMERICA, OF SETTLEMENT
HEARING TO CONSIDER THE PROPOSED SETTLEMENT AND OF YOUR
RIGHTS CONCERNING THE PROPOSED SETTLEMENT

IF YOU ARE A PHYSICIAN WHO PROVIDED COVERED SERVICES TO ANY
INDIVIDUAL ENROLLED IN OR COVERED BY CERTAIN HEALTH CARE
PLANS AT ANY TIME BETWEEN AUGUST 4, 1990 AND _____, 2005, OR A
PHYSICIAN GROUP OR A PHYSICIAN ORGANIZATION THAT INCLUDES
SUCH PHYSICIANS, PLEASE READ THIS NOTICE CAREFULLY. THIS CLASS
ACTION AND THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS.

I. WHY SHOULD YOU READ THIS NOTICE?

If you are or have been a physician, physician group, or physician organization who or which practiced in the United States since August 1990, your rights may be affected by a proposed settlement with The Prudential Insurance Company of America, in the class action lawsuit known as *Shane v. Humana, Inc., et al.*, Master File No. 00-1334-MD-MORENO (the "Action"), which is part of a federal multi-district litigation that is pending in the U.S. District Court for the Southern District of Florida (the "Court") called *In re Managed Care Litigation*, MDL Docket No. 1334 (Provider Track Cases). In addition to Prudential, the Action involves all of the direct and indirect subsidiaries and affiliates of Prudential involved in the health care business, including PRUCO, Inc., Prudential Health Care Plan, Inc., Prudential Health Care Plan of Oklahoma, Inc., Prudential Health Care Plan of New York, Inc., Prudential Health Care Plan of Connecticut, Inc., Prudential Health Care Plan of California, Inc., and Prudential Health Care Plan of Georgia, Inc., and others (collectively "Prudential"). The settlement encompasses all of these entities. You may be a member of the Prudential settlement class in this Action if you have submitted claims to any of these Prudential entities or to other managed care companies.

The class representatives and certain medical societies have agreed to settle all claims against Prudential in the Action in exchange for the establishment of a settlement fund. The Court has scheduled a hearing to consider the fairness, reasonableness and adequacy of the proposed settlement with Prudential, together with certain other matters, to be held on _____, 2005, at ___:00 A.M./P.M., at the United States Courthouse,

Courtroom IV, Tenth Floor, Federal Justice Building, 99 Northeast Fourth Street, Miami, Florida, 33132. (the "Settlement Hearing").

You may be a member of the Class who therefore would be entitled to receive the benefits of the proposed settlement. As a member of the Class, however, you will also be bound by the release and other provisions of the settlement if it is approved by the Court. You may elect to opt-out of the Class and the settlement, as explained below. You also have a right to object to the settlement or to the applications for attorneys' fees and representative plaintiffs' fees that counsel for the Class intend to make to the Court, but only if you comply with the procedures described in this notice. **BECAUSE YOUR RIGHT TO PURSUE CERTAIN TYPES OF CLAIMS AGAINST PRUDENTIAL, AND CERTAIN OTHERS AFFILIATED WITH PRUDENTIAL, MAY BE AFFECTED BY THE SETTLEMENT, YOU SHOULD READ THIS NOTICE CAREFULLY.**

II. WHAT IS THIS LITIGATION ABOUT?

The Action has been brought by the representative plaintiffs, who are practicing or retired physicians from around the United States, on behalf of a class of physicians, and by certain medical societies, against a number of health care insurance companies, including Aetna, Anthem, Inc., Cigna, Coventry Health Care, Inc., Health Net, Inc., Humana Health Plan, Inc., Humana, Inc., Pacificare Health Systems, Inc., The Prudential Insurance Company of America, United Health Care, United Health Group and Wellpoint Health Networks, Inc. (collectively the "Defendants"). The complaint in the Action alleges that between 1990 and present, these companies engaged in a conspiracy to improperly deny, delay and/or reduce payment to physicians, physician groups and physician organizations by engaging in several types of allegedly improper conduct, including:

- Misrepresenting and/or failing to disclose the use of edits to unilaterally "bundle," "downcode" and/or reject claims for medically necessary covered services;
- Failing to pay for "medically necessary" services in accordance with member plan documents;
- Failing and/or refusing to recognize CPT® modifiers;
- Concealing and/or misrepresenting the use of improper guidelines and criteria to deny, delay, and/or reduce payment for medically necessary covered services;
- Misrepresenting and/or refusing to disclose applicable fee schedules;
- Failing to pay claims for medically necessary covered services within the required statutory and/or contractual time periods;
- Misrepresenting and/or failing to disclose the use of inappropriate or unsound criteria to determine payments due to physicians, physician groups and physician organizations compensated under "capitation" systems;
- Failing to pay "actuarially sound" capitation rates;

- Failing to timely assign members to physicians, physician groups and physician organizations compensated under capitation systems.

The complaint claims that this conduct violated various state and federal statutes. The named plaintiffs in the complaint also seek recovery on various common law theories, including breach of contract, based on practices such as those summarized above. If you would like further information about the claims asserted in the Action, you can review a copy of the complaint at www.hmocrisis.com.

The Action is one significant component of litigation asserting these claims and certain others against managed care companies which began in early 2000 and ultimately were transferred to the federal court in Miami to become part of a multi-district litigation. Since the initial complaints were filed, substantial proceedings have occurred in the Action, including the production of a significant number of documents by the Defendants, as well as claims and payment data, and the depositions of various of the representative plaintiffs, and witnesses employed by defendants, including Prudential, and third parties. In an order dated September 26, 2002, the Court certified a class and two subclasses of physicians in the Action. As part of the settlement, Prudential would no longer actively participate in Action, but expects other defendants, who are not parties to the proposed settlement, to continue to defend the claims asserted in the Action on various grounds.

III. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

In a settlement agreement dated ____, 2005 (the "Settlement Agreement"), the representative plaintiffs and the signatory medical societies have agreed to settle all claims that were or could have been asserted against Prudential and its affiliates and subsidiaries in the Action in exchange for certain monetary consideration.¹ The terms of the Settlement Agreement are summarized in this notice, but a copy of the entire Settlement Agreement can be reviewed at www.hmocrisis.com. It is also available at www.WhatleyDrake.com, www.ArchieLamb.com, www.milberg.com, www.kttlaw.com and www.wcqp.com.

None of the Defendants in the Action other than Prudential are parties to the Prudential proposed settlement, and even if the settlement is approved by the Court, the representative plaintiffs and the signatory medical societies intend to continue to prosecute their claims against other defendants in the Action who are not parties to this settlement or any other settlement.

A. The Settlement Class

The proposed Prudential settlement will be on behalf of the following Class, which has been certified for settlement proposes:

Any and all physicians, physician groups and physician organizations who provided covered services to any plan member or any other individual enrolled in or covered

¹ A previous settlement with Aetna has already provided for changes in practices of the health care business units acquired by Aetna from Prudential, and thus changes in business practices are not a part of this settlement with Prudential.

by a plan offered or administered by any person or entity named as a defendant in the Action or by any of their respective current or former subsidiaries or affiliates, in each case from August 4, 1990 through and including _____, 2005 (the date that the Court entered its order preliminarily approving the proposed settlement and directing that this notice be provided to you).

The Prudential settlement Class is different from the class and subclasses certified by the Court in the Action. Prudential believes that there are significant aspects of the settlement Class that distinguish it from the class and subclasses that have been certified by the Court, including, for example, the fact that the settlement Class includes physician groups and physician organizations, while the class and subclasses that have been certified by the Court are limited to physicians alone, and the fact that if the proposed settlement is approved and becomes effective, both Prudential and all members of the settlement Class will be deemed to have waived their rights to arbitration under the applicable contracts. In addition, the settlement Class does not raise the problems of manageability that Prudential believes affect the class and subclasses as certified by the Court in the Action.

B. The Settlement Consideration

If the settlement is approved by the Court, the Settlement Agreement provides for the following as compensation for damages to the Class members:

1. The Settlement Fund

Prudential will make a settlement payment of Twenty-Two Million, and Fifty-Thousand Dollars (\$22,050,000) which, together with accrued interest from the date of Preliminary Approval, will be distributed to the Settlement Fund. The Settlement Fund shall be used to address issues relating to abuses of managed care, and in particular to assist Class Members by (a) monitoring and attempting to assure compliance with all settlements in this litigation and (b) identifying and addressing future health plan practices that burden the ability of Class Members to be paid fairly for their services. It is anticipated that the assets of the Settlement Fund will be lawfully transferred into a non-profit, tax exempt entity with the same purposes. Class Counsel will appoint a Committee of General Counsel and/or Executives of Signatory Medical Societies and/or Representative Plaintiffs to monitor the Fund and successor entity and to determine expenditures made from either.

C. The Release and Dismissal with Prejudice

Upon final approval, the Action will be dismissed with prejudice as to Prudential. In addition, Prudential, and certain others affiliated with Prudential, will receive a release and discharge from the Class (which would not include members of the Class who timely elect to opt-out of the settlement, as discussed below) of any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys' fees, losses, claims, liabilities and demands of whatever kind or character (each a "Claim"), arising on or before _____, 2005 (the date that the Court's order preliminary approving the settlement was entered), that are, were or could have been asserted against any of the released parties based on or arising from the factual allegations of the complaint in the

Action, whether any such Claim was or could have been asserted by any releasing party on its own behalf or on behalf of other persons.

Nothing in the Settlement Agreement is intended to relieve any person or entity that is not a released party from responsibility for its own conduct or the conduct of other persons or entities who are not released parties, or to preclude any plaintiff from introducing any competent and admissible evidence to the extent consistent with the Settlement. Moreover, nothing in the Settlement Agreement prevents the plaintiffs and the Class from pursuing claims to hold any person or entity that is not a released party liable for damages caused by any released party.

Finally, the Settlement Agreement includes a covenant not to sue Prudential or the other released parties for Claims that are generally subject to the release, subject to certain limited exceptions which are described in detail in section 13.6 of the Settlement Agreement.

The release provided for in the Settlement Agreement applies to Claims whether they are known or unknown. In this regard, each member of the Class that has not timely elected to opt-out of the settlement and the Class shall be deemed expressly to have waived and released any and all provisions, rights and benefits conferred either (a) by California Civil Code § 1542, which reads:

"Section 1542. General Release – Claims Extinguished.
A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

or (b) by federal law, by any law of any state or territory of the United States, or principle of common law, which is similar to § 1542 of the California Civil Code.

IV. WHAT WILL HAPPEN AT THE SETTLEMENT HEARING?

As mentioned above, the Settlement Hearing will be held on _____, 2005, at ___:00 A.M./P.M., at the United States Courthouse, Courtroom IV, Tenth Floor, Federal Justice Building, 99 Northeast Fourth Street, Miami, Florida, 33132. However, the order scheduling that hearing also provides that it may be adjourned by the Court and that no additional notice will be provided to potential members of the Class other than an announcement in open court.

At the Settlement Hearing, the Court will consider several different issues.

First, the Court will consider whether the proposed settlement of the Action with Prudential that is reflected in the Settlement Agreement is fair, reasonable and adequate to members of the Class.

Second, the Court will consider whether it should certify the Class pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure. Among other things, this will require the Court to determine (i) whether questions of law or fact common to the members of the Class predominate over questions affecting only individual members of

the Class, and (ii) whether a class action is superior to other available methods for fair and efficient adjudication of the controversy. If the Court certifies the Class, potential Class members who have timely elected to opt-out from the Class by following the procedures described below will be excluded from it.

Third, the Court will consider whether to enter orders that would prevent members of the Class and certain other persons, including the Defendants in the Action other than Prudential, from asserting certain claims against Prudential in the future.

Fourth, the Court will consider the application for a payment of fees to the representative plaintiffs by Prudential, which is discussed in more detail below.]

Finally, the Court will consider an application by counsel to the Class for attorneys' fees and expenses to be paid by Prudential, which is also discussed in more detail below.

V. CAN I PARTICIPATE IN THE SETTLEMENT HEARING?

Any member of the Class, or other interested person or entity, who or which objects to the proposed settlement with Prudential, the Settlement Agreement, the application for plaintiffs' attorneys' fees or the other matters to be considered at the Settlement Hearing may appear and present such objections, provided, however, that no member of the Class who or which has elected to opt out from the Class will be entitled to object. In order to be permitted to object to the proposed settlement, however, you must, on or before _____, 2005 [**"Objection Date" – 60 days after Notice Date**] comply fully with the following requirements:

- File with the Court a notice of your intention to appear, together with a statement setting forth your objections, if any, to the matters to be considered and the basis for those objections, together with any documentation that you intend to rely upon at the Settlement Hearing, and
- Serve copies of all such materials either by hand delivery or by first-class mail, postage prepaid, upon the following counsel:

Harley S. Tropin, Esq.
Kozyak Tropin & Throckmorton, P.A.
200 South Biscayne Boulevard
Miami, Florida 33131

John D. Aldock, Esq.
Goodwin Procter LLP
901 New York Ave., N.W.
Washington, D.C. 20001

If you do not comply with the foregoing procedures and deadlines for submitting written objections and/or appearing at the Settlement Hearing, you may lose substantial legal rights, including but not limited to, the right to appear and be heard at the Settlement Hearing; the right to contest approval of the proposed settlement or the application for an award of attorneys' fees and expenses to plaintiffs' counsel; the right to

contest approval of the application for an award of a fee to representative plaintiffs; or the right to contest any other orders or judgments of the Court entered in connection with the proposed settlement.

If the Court does not approve the proposed settlement, the Settlement Agreement will be null and void. If there are further actions taken in the Action that affect your rights, you will receive notice as determined by the Court.

VI. WHAT IF I DO NOT WANT TO BE PART OF THE SETTLEMENT?

If you do not want to be a member of the Class and participate in the proposed Settlement, then **BY NO LATER THAN** _____, 2005, you must send a signed statement to that effect that includes your name, business address, telephone number and Federal Tax Identification Number to the following:

[Name]
[Address]
[Phone number]

TO BE CONSIDERED TIMELY AND TO EFFECTIVELY OPT-OUT OF THE SETTLEMENT, YOUR COMPLETED AND SIGNED OPT-OUT NOTICE MUST BE POSTMARKED BY NO LATER THAN _____, 2005. IF IT IS NOT POSTMARKED BY THAT DATE, YOUR RIGHT TO OPT-OUT WILL BE DEEMED WAIVED AND YOU WILL BE BOUND BY ALL ORDERS AND JUDGMENTS ENTERED IN CONNECTION WITH THE SETTLEMENT.

If you choose to opt-out of the settlement and the settlement Class, you will not be entitled to receive the benefits of the proposed settlement with Prudential. Your claims against Prudential will not be released and you will be free to pursue any claims you believe you have by filing a separate action or request for arbitration if you are subject to an arbitration agreement.

Any member of the Class who or which timely submits a request to opt out of the settlement will have until the Settlement Hearing to deliver to the above address a written revocation of the request to opt out and shall thereby become a member of the Class.

VII. WHAT ABOUT ATTORNEYS' FEES, COSTS AND EXPENSES?

If the Court approves the proposed settlement, counsel to the plaintiff class will apply to the Court for an award of attorneys' fees, including costs and expenses. In the Settlement Agreement, Prudential agreed not to oppose such an application in the aggregate amount of up to Five Million Dollars (\$5,000,000). If the Court awards plaintiffs' attorneys' fees and expenses in an amount no greater than that amount, Prudential will pay the amount awarded by the Court to plaintiffs' counsel. This payment is in addition to the consideration to the members of the Class that is described above and will not reduce the amount available to members of the Class if the proposed settlement is approved.

VIII. WHAT ARE THE REPRESENTATIVE PLAINTIFFS' FEES?

In addition to the application for attorneys' fees and expenses described in the preceding section, in connection with the Court's consideration of the proposed settlement, the representative plaintiffs intend to seek an award from the Court of fees in the amount of up to \$7,500 for each representative plaintiff which if awarded would be in addition to the settlement consideration that will be available to members of the Class generally. In the Settlement Agreement, Prudential agreed not to oppose such an application up to \$7,500 for each representative plaintiff. If the Court awards representative plaintiffs a fee up to that amount, Prudential will pay such amount to the representative plaintiffs.

IX. WHO CAN I CONTACT WITH QUESTIONS?

If you have questions regarding this notice, the proposed settlement with Prudential or the Action generally, you can obtain additional information from the following sources:

On the Internet, at any of these sites:

www.ArchieLamb.com
www.kttlaw.com

www.WhatleyDrake.com
www.milberg.com

By Telephone:

[fill in]

By Mail:

Law Offices of Archie Lamb, LLC
2017 2nd Avenue
Birmingham, Alabama 35203
Attention: Archie Lamb, Esq.

Kozyak Tropin & Throckmorton
200 South Biscayne Boulevard
Miami, Florida 33131-2335
Attention: Harley Tropin, Esq.

Milberg Weiss Bershad Hynes & Lerach LLP
One Pennsylvania Plaza
New York, New York 10119-0165
Attention: Edith Kallas, Esq.

PLEASE DO NOT CALL PRUDENTIAL, THE COURT OR THE CLERK'S OFFICE.

X. EXAMINATION OF PAPERS

This notice is a summary and does not describe all details of the proposed settlement with Prudential, the Settlement Agreement or the proceedings in the Action generally. Complete copies of the Settlement Agreement and certain pleadings and papers filed in the Action can be found for review on the following websites:

www.ArchieLamb.com
www.kttlaw.com

www.WhatleyDrake.com
www.milberg.com

In addition, you may review the complete files of papers submitted in the Action at the office of the Clerk of the Court, United States Courthouse, U.S. District Court for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida during regular business hours.

XI. REQUEST TO FORWARD THIS NOTICE

If you would be a member of the Class described in this notice but you have assigned any claim that might be covered by the proposed settlement or the release described above, please forward this notice to the appropriate person as soon as possible.

Dated: _____, 2005

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA