

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA
FOURTH DIVISION

Scott Smith and Jennifer L. Brodt,
on behalf of themselves
and all persons similarly situated,

Court File No. 00-1163 ADM/AJB

Plaintiffs,

vs.

United HealthCare Services, Inc., and
United HealthCare Insurance Company,

Defendants.

**Order Preliminarily Certifying Settlement
Class, Approving Settlement Stipulation, Approving
Proposed Legal Notice, and Scheduling Fairness Hearing**

Upon the parties' joint motion (Docket No. 100) pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to preliminarily approve the proposed Stipulation of Settlement ("Settlement Stipulation") and exhibits thereto, including the proposed (i) Plan of Distribution and (ii) Proposed Notice for Publication, and to set a date for a Fairness Hearing to determine whether the Settlement should be approved, it is hereby ORDERED:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Settlement Stipulation.

2. *Settlement Class Certification.* Civil Action No. 00-1163 ADM/AJB, styled *Smith, et al. v. United HealthCare Services, Inc., et al.* (the "Action") shall continue to be maintained as a class action pursuant to Fed. R. Civ. P. 23(b)(2). The order dated February 5,

2002, conditionally certifying the Class, is hereby modified such that the Class shall consist of the following:

All participants and their beneficiaries of health plans underwritten, managed, or administered by UHC (with the sole exception of health plans within the DIV known as CAE), whose benefits included 1997 Riders providing that the participant or beneficiary, in prescription drug purchases, was required to pay the lesser of "Prescription Drug Cost," "actual cost," or "cost," or the fixed dollar copayment amount specified in the Certificate of Coverage, or other document providing for or describing prescription drug benefits.

3. *Class Representatives and Class Counsel.* Scott Smith and Jennifer L. Brodt are designated Class Representatives. Wood R. Foster, Jr., Jordan M. Lewis and Peter Wasylyk are designated Class Counsel.

4. *Proposed Settlement.* The proposed settlement between plaintiffs and UHC, as set forth in the Settlement Stipulation and the exhibits therein, appears, upon preliminary review, to be within the range of reasonableness and accordingly shall be submitted to the Class Members for their consideration and for a hearing under Fed. R. Civ. P. 23(e).

5. *Publication Notice.* The Court finds that the form and manner of notice specified in Exhibit A (Plan of Distribution) and Exhibit C (Notice for Publication) to the Settlement Stipulation is appropriate and reasonable. As described in Section 2 of the Plan of Distribution, defendants shall provide notice of the hearing on final approval and notice of all material elements of the proposed settlement by publishing once a "long form of notice" in *USA Today* and publishing twice a "short form of notice" in the Sunday and weekday editions of the following newspapers: *Akron Beacon Journal, Atlanta Journal Constitution, Baltimore Sun, Baton Rouge Advocate, Eau Claire Leader Telegram, Cincinnati Enquirer, Cleveland Plain Dealer, Columbus Dispatch, Dallas Morning News, Des Moines Register, Florida Today, Hartford Courant, Houston Chronicle, Kansas City Star, Lansing State Journal, Louisville Courier Journal, Wisconsin State Journal, Milwaukee Journal Sentinel, Arizona Republic,*

Providence Journal, St. Louis Post-Dispatch, Salt Lake City Tribune, Syracuse Post-Standard, Toledo Blade, and Arizona Daily Star.

6. *Website.* In addition, defendants shall establish and maintain a dedicated website containing information for Class Members and will include links to download key documents, such as the Settlement Stipulation, the short and long forms of notice, and the Court's Preliminary Approval Order. The costs and expenses of publishing such notices shall be paid by UHC, subject to the provisions of paragraph 11 of the Settlement Stipulation.

7. *No Individual Notice.* The Court finds that individual notice to all Class Members of the proposed settlement is not required since the Class was originally certified under Fed. R. Civ. P. 23(b)(2). The Court further finds that notice by publication is the only effective form of notice under the circumstances of this case, as notice by mail is not possible, given the fact that Class Members have not been identified at this time.

8. *No Opt-Out.* Because this is a Rule 23(b)(2) action, and in view of the fact that Class Members entitled to distributions under the Plan of Distribution will automatically receive them, no similar litigation has been initiated on behalf of any individual, and in consideration of the injunctive relief sought, no "opt out" (request for exclusion) is necessary as a part of this settlement or as an element in the proposed notice to Class Members.

9. *Plan of Distribution.* The parties shall undertake to collect information necessary to calculate distributions in accordance with the procedures and methodologies set forth in the Plan of Distribution. The parties shall use their best efforts to provide the Court with Class Counsel's final group distribution amounts at the Fairness Hearing or by letter soon thereafter.

10. *Hearing.* ~~A Fairness Hearing will be held on Wednesday, November 3, 2004, at 9:00 a.m. (or at any such adjourned time or times that the Court may without further notice~~

