

STATE OF NORTH CAROLINA  
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
05 CVS 5606

MACY M. HAMM, Individually and on behalf of )  
All Others Similarly Situated, )

Plaintiff, )

v. )

BLUE CROSS AND BLUE SHIELD OF NORTH )  
CAROLINA, )

Defendant. )

**NOTICE TO CLASS MEMBERS**

**PLEASE READ THIS NOTICE CAREFULLY  
A COURT AUTHORIZED THIS NOTICE.  
THIS IS NOT A SOLICITATION FROM A LAWYER.**

**THIS IS TO NOTIFY YOU THAT THE ABOVE-CAPTIONED ACTION  
HAS BEEN CERTIFIED AS A CLASS ACTION.**

**YOU HAVE BEEN IDENTIFIED AS A MEMBER OF A CLASS ACTION  
LAWSUIT AGAINST BLUE CROSS AND BLUE SHIELD OF NORTH  
CAROLINA.**

**THIS CLASS ACTION HAS BEEN SETTLED AND MAY AFFECT YOUR  
RIGHTS.**

**YOU ARE NOT BEING SUED!**

**YOU ARE ENTITLED TO RECEIVE BENEFITS UNDER THE PROPOSED  
SETTLEMENT**

A class action was brought by Plaintiff Macy M. Hamm against Blue Cross and Blue Shield of North Carolina seeking money damages and other relief. The case has been assigned to the Honorable John R. Jolly, Jr., Special Superior Court Judge for Complex Business Cases. Judge Jolly certified this matter as a class action on August 5, 2008. The parties have reached a Settlement Agreement and Judge Jolly has directed that this Notice be provided to you to inform you of your rights in the proposed Settlement as a member of the Class. **You should read the entire Notice carefully because your legal rights are affected whether you act or not.**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

<p><b>YOU CAN DO NOTHING AND REMAIN A CLASS MEMBER AND RECEIVE BENEFITS UNDER THE SETTLEMENT</b></p>	<p>Stay in this lawsuit as a Class member and receive the benefits of the Settlement. This Settlement offers benefits to members of the Class in the form of a monetary payment reflecting a portion of the amount of the Settlement Fund (\$1,900,000) that will be paid to Class members based on a calculation performed by the Settlement Administrator, derived from claims data, of each Class member's pro rata share of the monetary relief or Settlement Fund after payment of attorneys' fees, costs of litigation, notice and settlement administration. That calculation is based on the difference between the charged amounts and the allowed amounts for the claims for each of the Class members in proportion to the sum of the Individual Claim Differential for all members of the Class.</p> <p>By doing nothing, you remain a Class member and can get your share of the Settlement benefits in the form of monetary payment. But, if you remain a class member in this case, you give up any rights to sue the Blue Cross and Blue Shield of North Carolina separately about the same legal claims in this lawsuit. In other words, you can remain a member of this class action and receive the benefits of the Settlement of this case or you can bring a suit on your own, separately, but you cannot do both.</p> <p>By doing nothing and remaining a member of the Class, if you are entitled to receive monetary payment, you will receive a check through the United States postal service, first class, in the amount of your share of the Settlement proceeds. Checks will be mailed within sixty days of the Final Approval of the Settlement.</p>
<p><b>YOU CAN ASK TO BE EXCLUDED AND NOT BE A CLASS MEMBER.</b></p>	<p>Get out of this lawsuit. This is called "opting-out."</p> <p>If you ask to be excluded or "opt out," you get no benefits or money from this Settlement. You keep your rights to sue Blue Cross and Blue Shield of North Carolina on your own but have to do so at your own expense and you must do so promptly. If you ask to be excluded and money or benefits are later awarded, you won't share in those. You will get no money from the Class Action if you opt out. But, you keep any rights to sue Blue Cross and Blue Shield of North Carolina about the same legal claims in this lawsuit. If you choose to sue on your own, you should act soon because the statute of limitations may bar your claim.</p>
<p><b>YOU CAN OBJECT TO THE SETTLEMENT</b></p>	<p>You can file a written objection to the proposed Settlement to voice your opposition to the Settlement. You cannot both exclude yourself and object to the proposed Settlement.</p>

**BASIC INFORMATION**

**1. Why did I get this notice?**

Blue Cross and Blue Shield of North Carolina (BCBSNC) records show that between November 1, 2002 and December 31, 2008 ("Class Period") you were a member of a Blue Cross and Blue Shield of North Carolina health insurance plan – either Blue Advantage or Blue Options. This notice explains that the Court has allowed, or "certified," a class action lawsuit that may affect you and that the parties have reached a Settlement. You have legal rights and options that you may exercise before the Court determines whether to give final approval to the Settlement. Judge John R. Jolly, the Special Superior Court Judge for Complex Business Cases in Raleigh, North Carolina is overseeing this class action.

The lawsuit is known as *Hamm v. Blue Cross and Blue Shield of North Carolina*. These records also indicate that during this same period, you exceeded a benefit period maximum and you may have been charged a fee by a BCBSNC in-network provider that was more than the contracted rate (also called an allowed amount) between the in-network provider and BCBSNC. BCBSNC has identified you as a class member.

**YOU HAVE BEEN IDENTIFIED AS A MEMBER OF THE CLASS. You will remain a member of the Class and be entitled to your share of the benefits under the Settlement unless you exclude yourself.**

You are a member of the Class if:

- 1) You were a member of a BCBSNC PPO (preferred provider organization) Plan – Blue Advantage or Blue Options – at any time from November 2002 through December 31, 2008; AND
- 2) Your plan was not covered by the Employment Retirement Income Security Act (ERISA); AND
- 3) During any benefit period, you reached your benefit period maximum or lifetime maximum under the terms of your PPO contract with BCBSNC; AND
- 4) You were charged by an in-network provider more than the allowed amount for covered services or supplies after reaching your benefit period or lifetime maximum.

## **2. What is this lawsuit about?**

After she reached her benefit period maximum for certain services, Plaintiff contends she was charged the full provider charge by a Blue Cross and Blue Shield of North Carolina (BCBSNC) in-network provider instead of the contracted - or “allowed amount”- that BCBSNC pays to its in-network providers. Plaintiff contends that under her contract of insurance with BCBSNC, she was entitled to pay the allowed amount rather than the full charged amount for services she received after she reached her benefit period maximum.

Plaintiff brought suit asserting claims for breach of contract, breach of good faith and unfair and deceptive trade practices on behalf of herself and for all Class Members.

Blue Cross and Blue Shield of North Carolina has denied the essential allegations of Plaintiff’s claims and all liability, but the parties have now agreed to settle the lawsuit, and this Settlement provides you with benefits.

## **3. What is a class action and who is involved?**

In a class action, one or more people called “Class Representatives” (in this case, Macy Hamm) sue on behalf of other people who have similar claims. The people together are a “Class” or are “Class Members.” The Class Representatives and the Class Members are called Plaintiffs. The company being sued, Blue Cross and Blue Shield of North Carolina, is called a Defendant. The Court that allowed this matter to be a Class Action will resolve the issues for everyone in the Class – except for those people who ask to be excluded from the Class by “opting out.”

#### 4. Why is this lawsuit a class action?

The Court decided that this lawsuit can be a class action because it meets the requirements of North Carolina Rule of Civil Procedure 23, which governs class actions in state court. Specifically, the Court found that several thousand people insured by Blue Cross and Blue Shield of North Carolina were affected by common legal and factual issues. The Court further found that the common legal and factual issues were more important than the issues that affect only individuals. Finally, the Court found that the class action will be more efficient than having many individual lawsuits because of the common issues. More information about why the Court is allowing this lawsuit to be a class action is in the Court's Order on Class Certification, which is available at <http://www.ncbusinesscourt.net/TCDDotNetPublic/default.aspx?CID=3&caseNumber=05CVS5606>.

#### 5. What Does the Proposed Settlement Provide?

The proposed Settlement provides for a monetary payment in the amount of one million and nine hundred thousand dollars (\$1,900,000). The monetary payment, net of attorney's fees and expenses, will be distributed to the Class members for whom the amount billed for treatment by an in-network provider was in excess of the allowed amount during the Class Period, when the benefit maximum was exceeded. Provided that you had such claims, where the amount billed was in excess of the allowed amount for those services, you will receive a check for your share of the monetary payment if this proposed Settlement is approved by the Court. The Settlement also provides for the Defendant to pay up to an additional \$56,000 to provide for notice to the Class, Settlement Administration and an incentive award to the Representative Plaintiff, which may be sufficient to cover those costs and may therefore avoid the need to pay for those items from the Settlement Fund.

#### 6. Has the Court decided who is right?

The Court has not decided whether the Plaintiff or the Defendant is correct. By preliminarily approving the Settlement and ordering the issuance of this Notice, the Court is not suggesting that the Plaintiffs will win or lose this case. The Court will decide whether to approve the proposed Settlement and whether it is fair and reasonable.

### YOUR RIGHTS AND OPTIONS

You have to decide NOW whether to stay in the Class or ask to be excluded through opting out.

#### 7. What happens if I do nothing?

You do not have to do anything now if you want to remain a Class Member and receive your share of the proposed Settlement money. By doing nothing, you remain a Class Member. By being a Class Member, you will be legally bound by the Final Judgment the Court makes in this case and will give up your right to sue Blue Cross and Blue Shield of North Carolina for damages or other relief resulting from the claims at issue in this lawsuit.

#### 8. What if I don't want to be a Class Member?

If you want to be excluded from the Class, you will have to send an "Exclusion Request" in the form of a letter sent by mail, stating that you want to be excluded from *Hamm v. Blue Cross and Blue Shield of North Carolina*. Be sure to include your name and address, and sign the letter. You must mail your Exclusion Request postmarked by **JANUARY 18, 2012** to:

*Hamm v. Blue Cross and Blue Shield of North Carolina Exclusion*  
c/o Strategic Claims Services  
600 N. Jackson Street, Suite 3  
Media, PA 19063

## THE LAWYERS REPRESENTING YOU

### 9. Do I have a lawyer in this case?

The Court decided that Donald H. Beskind of Twiggs, Beskind, Strickland & Rabenau, P.A, and Jerome M. Marcus, Jonathan Auerbach and J. Martin Futrell of Marcus & Auerbach LLC are the lawyers appointed to represent you and all Class Members. Together, the lawyers are called Class Counsel. They are experienced in handling similar cases and class actions against other insurance companies. They can be contacted at the following addresses

Donald H. Beskind  
Twiggs, Beskind, Strickland  
& Rabenau, P.A.  
150 Fayetteville Street Mall  
Ste 1100  
Raleigh, NC 27601

Jerome M. Marcus  
Jonathan Auerbach  
J. Martin Futrell  
Marcus & Auerbach LLC  
101 Greenwood Avenue, Suite 310  
Jenkintown, PA 19046

You can also contact your lawyers at [BCBSNCClassAction@marcusauerbach.com](mailto:BCBSNCClassAction@marcusauerbach.com).

### 10. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want to have your own attorney, you have the right to do so. You will have to pay that lawyer.

### 11. How will the lawyers be paid?

Since the lawsuit started in November of 2005, Class Counsel have devoted substantial resources and expenditures in pursuing claims on behalf of the Class purely on a contingent basis, meaning the law firms working with Class Counsel have received no fees or other compensation for their services or reimbursement of their expenses to date. Class Counsel will ask the Court for an award of fees and expenses out of the Settlement. You won't have to pay these fees and expenses. As part of the proposed Settlement, Class Counsel will ask the Court to approve an amount of attorneys' fees not to exceed six hundred sixty-five thousand dollars (\$665,000) and reimbursement of expenses not to exceed fifty thousand dollars (\$50,000).

If you choose to be represented by your own attorney, you will have to pay for that yourself. If the Court grants Class Counsel's request, the fees and expenses would be deducted from the monetary relief obtained for the Class.

### 12. Dismissal with Prejudice and Release of Claims

If the Court approves the proposed Settlement, it will enter a judgment that will dismiss the litigation with prejudice as to all claims against Defendant, will also receive a release and discharge of all claims, demands, actions, suits and/or causes of action that were brought or could have been brought, known or unknown, arising out of or related to any of the facts alleged in the Class Action complaint, whether based on federal or state law, relating to health care services provided during the period of November 1, 2002 to December 31, 2008.

### 13. How do I object to the Settlement?

If you want to object to the proposed Settlement, you must submit your objection in writing, stating that you object to the Settlement of *Hamm, et al. v. Blue Cross and Blue Shield of North Carolina*. Your written objection must include your name, address, and the reasons you object to the proposed Settlement. You must also submit copies of any

documents you wish to support your objection. You must sign your written objection and then submit it via U.S. Mail to the Settlement Administrator at the following address, postmarked no later than **JANUARY 25, 2012**:

*Hamm v. Blue Cross and Blue Shield of North Carolina*  
c/o Strategic Claims Services  
600 N. Jackson Street, Suite 3  
Media, PA 19063

If you submit an objection in accordance with the above requirements, then **YOU HAVE THE RIGHT TO APPEAR AND BE HEARD** on your objection at the Fairness Hearing, which is discussed in detail below. You may appear personally or through your attorney at the Fairness Hearing and you may present any evidence or argument that is proper and relevant to your written objection. You will only be permitted to be heard on those matters set forth in your written objection.

If you do not submit an objection in accordance with the above requirements, you will not be treated as having filed a valid objection to the proposed Settlement and will not have the right to appear and be heard at the Fairness Hearing.

If you hire an attorney for the purpose of objecting to any aspect of the proposed Settlement, the attorney must file an entry of appearance with the Clerk of Court, Durham County, North Carolina no later than **JANUARY 25, 2012** and send a copy of such entry of appearance to the above address by U.S. Mail postmarked no later than **JANUARY 25, 2012**.

You cannot file an objection if you exclude yourself from the Class by opting-out.

#### **14. The Court's Fairness Hearing**

The Court will hold a fairness hearing on **FEBRUARY 8, 2012** at **NOON** at the North Carolina Business Court, 225 Hillsborough Street, Suite 303, Raleigh, North Carolina. At the hearing, the Court will decide whether to approve the proposed Settlement and the request for attorney's fees and reimbursement of expenses. If objections have been timely received, the Court will consider them at this time. You may attend the Fairness Hearing and if you submitted an objection in accordance with the above requirements, then you have the right to be heard on your objection. You are not required to attend the Fairness Hearing.

### **ADDITIONAL INFORMATION**

You may also write to the Settlement Administrator at the following address:

*Hamm v. Blue Cross and Blue Shield of North Carolina*  
c/o Strategic Claims Services  
600 N. Jackson Street, Suite 3  
Media, PA 19063

A website was created for this Settlement containing all the important documents for the Settlement. If you wish to view these documents, or if you would like to update your address, please visit [www.bcbsncsettlement.com](http://www.bcbsncsettlement.com).

Please do not contact Blue Cross and Blue Shield of North Carolina with questions about the Settlement or the amount of money you may receive.

Contact Class Counsel at [BlueCrossNCClass@marcusauerbach.com](mailto:BlueCrossNCClass@marcusauerbach.com).

Remember **DO NOT CONTACT THE COURT**. Personnel there are not able to provide you with information about this case.

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*Hamm v. Blue Cross and Blue Shield of North Carolina*  
c/o Strategic Claims Services  
600 N Jackson Street – Suite 3  
Media, PA 19063

Mail ID: «ID»  
«Name»  
«Address»  
«address2»  
«city», «State» «Zip»