

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

BARBARA EDWARDS, IN HER  
CAPACITY AS TRUSTEE IN  
BANKRUPTCY OF ROXBURY SURGICAL  
CENTER, LLC f/d/b/a ROXBURY OPEN  
MRI AND SURGERY CENTER, AND  
NORTH JERSEY AMBULATORY  
SURGERY CENTER, LLC, INDIVIDUALLY  
AND ON BEHALF OF ALL OTHER  
SIMILARLY SITUATED INDIVIDUALS,

Plaintiffs,

v.

HORIZON BLUE CROSS BLUE SHIELD OF  
NEW JERSEY,

Defendant.

CIVIL ACTION NO. 08-6160 (KM)

**ORDER PRELIMINARILY  
CERTIFYING SETTLEMENT  
CLASS, GRANTING  
PRELIMINARY APPROVAL OF  
SETTLEMENT, AND APPROVING  
CLASS NOTICE**

THIS MATTER having been opened to the Court by Class Counsel, on behalf of Barbara Edwards, in her capacity as trustee in bankruptcy of Roxbury Surgical Center, LLC f/d/b/a Roxbury Open MRI and Surgery Center (the "Representative Plaintiff") and by counsel for Horizon Blue Cross Blue Shield of New Jersey ("Horizon"), by way of their joint motion for preliminary approval of the proposed settlement in the above action;

WHEREAS, the Representative Plaintiff, through Class Counsel, filed this action (the "Action") against Horizon individually and as assignee of claims by

Horizon members challenging the amount of the reimbursements paid for covered services provided to those members under small employer and other health plans issued or administered by Horizon beginning in approximately October 2004;

WHEREAS, the parties and their attorneys have entered into a settlement agreement dated December 15, 2017 ("Settlement Agreement"), in which the parties have agreed upon a settlement of the Action, which, if approved by the Court as to fairness, reasonableness and adequacy, will result in dismissal of the Action with prejudice;

WHEREAS, this Court has reviewed and considered the joint motion for preliminary approval and supporting materials filed by Class Counsel and Horizon's counsel and fully considered the record and the requirements of law; and for good cause appearing;

IT IS ON THIS 29<sup>th</sup> day of March, 2018,

ORDERED that the settlement (including all terms of the Settlement Agreement and exhibits thereto) is hereby PRELIMINARILY APPROVED.

The Court further finds and orders as follows<sup>1</sup>:

1. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 and personal jurisdiction over the parties before it. Venue is proper in this district.

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<sup>1</sup> To the extent not otherwise defined herein, all defined terms in this Order shall have the meaning assigned in the Settlement Agreement.

2. The Settlement Agreement falls well within the range of reason, has no obvious deficiencies, and does not unreasonably favor the Representative Plaintiff or any members of the Class.

3. Because the Settlement Agreement meets the standards for preliminary approval, the Court preliminarily approves all terms of the Settlement Agreement and its exhibits.

4. The Court finds, for settlement purposes only, that all requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied, as outlined below, and certifies the following class ("Settlement Class" or "Class"):

Any and all licensed ASCs located in New Jersey, individually and as assignees of Horizon members, that provided Out-of-Network Services to any Horizon member from October 1, 2004 through December 31, 2014 ("Class Period") and are in the Navigant Subclass or the SEHP Subclass or both.

5. The Settlement Class is comprised of the following two subclasses:

(a) "Small Employer Health Plan ("SEHP") Subclass," which is comprised of all out-of-network ASCs that Horizon and Class Counsel have determined were under-reimbursed for SEHP Claims from October 2004 through June 2008; and

(b) "Navigant Subclass," which is comprised of all out-of-network ASCs that the Class Representative contends, and Horizon disputes, could have been under-reimbursed for Navigant Claims from October 2004 through December 2014.

ASCs that opt out of the settlement in accordance with the procedures approved by this Court will be excluded from the Class.

6. The Court finds that the requirements of Rule 23(a) are satisfied, for settlement purposes only, as follows:

a) Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Class are so numerous that joinder of all members is impracticable.

b) Pursuant to Fed. R. Civ. P. 23(a)(2), the Court determines that there are common issues of law and fact for the Class as follows:

(i) Whether Horizon under-reimbursed members of the Class for SEHP Claims from October 2004 to June 2008; and

(ii) Whether Horizon's use of Navigant resulted in Horizon's under-reimbursement of members of the Class for Navigant Claims from October 2004 through December 2014.

c) Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Representative Plaintiff, who is a member of both the SEHP Subclass and Navigant Subclass, are typical of the claims of the members of both subclasses that she represents in that both the ASC for which the Representative Plaintiff serves as bankruptcy trustee and the members of the two subclasses allege that they were under-reimbursed for out-of-network services for SEHP Claims and Navigant Claims respectively.

d) Pursuant to Fed. R. Civ. P. 23(a)(4), the Representative Plaintiff will fairly and adequately protect and represent the interests of all members

of the Class, and the interests of the Representative Plaintiff are not antagonistic to those of the Class. Furthermore, the Representative Plaintiff is represented by counsel who is experienced and competent in the prosecution of complex class action litigation.

7. The Court further finds, for settlement purposes only, that the requirements of Rule 23(b)(3) are satisfied, as follows:

a) Questions of law and fact common to the members of the Class, as described above, predominate over questions that may affect only individual members; and

b) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

8. The Court hereby appoints as Class Representative Barbara Edwards, in her capacity as trustee in bankruptcy of Roxbury Surgical Center, LLC f/d/b/a Roxbury Open MRI and Surgery Center.

9. The Court finds that the content of the Notice, attached as Exhibit G to the Settlement Agreement, satisfies the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1) and due process, and accordingly approves such Notice.

10. This Court further approves the proposed methods for giving notice of the settlement to Class Members, as reflected in the Settlement Agreement and the joint motion for preliminary approval. The Court specifically approves the Parties'

proposal to (i) use information from Horizon's records to determine the last known address for each member of the Class, (ii) have the Administrator use this information to mail the Notice to members of the Class via first class mail and certified mail return receipt requested; and (iii) have the Administrator conduct additional research for any member of the Class that cannot be reached at that address. The Court also orders payment of notice costs as provided in the Settlement Agreement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process.

11. The Court hereby appoints Bruce H. Nagel, Esq. of the law firm Nagel Rice LLP and Neil Prupis, Esq. formerly of the law firm Lampf, Lipkind, Prupis & Petigrow as Class Counsel pursuant to Rule 23(g) and preliminarily finds that they fairly and adequately represent the interests of the Class.

12. The Court directs that pursuant to Fed. R. Civ. P. 23(e)(2) a hearing will be held on June 29, 2018 at 10am, to consider final approval of the Settlement Agreement (the "Final Approval Hearing" or "Fairness Hearing") including, but not limited to, the following issues: (a) whether the Class and subclasses should be finally certified for settlement purposes; (b) the fairness, reasonableness, and adequacy of the settlement; (c) Class Counsel's application for an award of

attorneys' fees and costs; and (d) approval of an award of service payment to the Representative Plaintiff. The Final Approval Hearing may be adjourned by the Court and the Court may address the matters set out above, including final approval of the Settlement Agreement, without further notice to the Class other than the notice that may be posted on the Court's docket.

13. Persons wishing to object to the proposed settlement and/or to be heard at the Fairness Hearing shall follow the following procedures:

a) To object, a member of the Class, individually or through counsel, must, by June 14, 2018, serve and file with the Clerk, a notice of Intent to Object, which includes: (i) the name, address and telephone number of the Class Member and, if applicable, the name, address and telephone number of the Class Member's attorney; (ii) the objection, including any papers in support thereof; and (iii) the name and address of any witnesses to be presented at the Fairness Hearing, together with a statement as to the matters on which they wish to testify and a summary of the proposed testimony, and must also simultaneously serve a copy thereof upon the following,

Class Counsel: Bruce H. Nagel  
Nagel Rice LLP  
103 Eisenhower Parkway, Suite 103  
Roseland, New Jersey 07068

Horizon's Counsel: Philip R. Sellinger/David Jay  
Greenberg Traurig, LLP  
500 Campus Drive, Suite 400  
Florham Park, New Jersey 07932

b) Any member of the Class who files and serves a written objection by the deadline stated in subsection (a) of this Paragraph may also appear at the Fairness Hearing, to the extent permitted by the Court, either in person or through an attorney hired at that Class Member's expense, to object to the fairness, reasonableness or adequacy of the proposed settlement. Any attorney representing a member of the Class for the purpose of making objections must also file a Notice of Appearance with the Clerk, and must also serve copies by mail to the counsel listed above.

c) Any member of the Class who does not timely file and serve a Notice of Intent to Object, and any witness not identified in the Notice of Intent to Object, shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

14. The Court hereby appoints Heffler Claims Group as Notice Administrator.

15. Members of the Class who elect not to participate in the settlement ("Opt-Outs") must submit a written request for exclusion that is postmarked no later than June 14, 2018. The Administrator shall compile a list of all Opt-Outs to be filed with the Court no later than the Fairness Hearing.



16. Any member of the Class failing to properly and timely mail such a written notice of exclusion shall be automatically included in the Class and shall be bound by all the terms and provisions of the Settlement Agreement (including the release) and the Order of Final Judgment. The Court shall resolve any disputes concerning the Opt-Out provisions of Agreement.


17. In the event that the settlement does not become effective for any reason, this Preliminary Approval Order and Order of Final Judgment shall be rendered null and shall be vacated, and all orders entered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement. If the settlement does not become effective, the parties shall have retained any and all of their current defenses and arguments for purposes of continued litigation (including but not limited to arguments relating to the satisfaction of the requirements of Fed. R. Civ. P. 23(a) and (b)(3)). In such case, this Action shall revert immediately to the respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and all other related orders and papers had not been executed.

18. Nothing in this Preliminary Approval Order, the Order of Final Judgment, the Settlement Agreement, or any documents or statements related thereto, is or shall be deemed or construed to be an admission or evidence of any

violation of any statute or law or of any liability or wrongdoing by Horizon, or an admission of the propriety of class certification for any purposes other than for purposes of the current proposed settlement.

19. All other proceedings in the Action are hereby stayed until such time as the Court renders a final decision regarding approval of the proposed settlement. No discovery with regard to the Action, or with respect to this settlement, shall be permitted other than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with this Court's rules. In addition, pending a determination on final approval of the settlement, all Class Members are hereby barred and enjoined from commencing or prosecuting any action involving any Released Claims (as defined in the Agreement).

20. The Court shall retain continuing jurisdiction over the Action, the Parties and the Class, and the administration, enforcement, and interpretation of the Settlement Agreement. Any disputes or controversies arising with respect to the Settlement Agreement shall be presented by motion to the Court.

  
KEVIN McNULTY, U.S.D.J.