

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AGREEMENT

FOLWEILER V. AMERICAN FAMILY INSURANCE COMPANY, ET AL.

In the Superior Court of King County, Washington
Case No. 16-2-16112-0 SEA

**READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED**

This is NOT a solicitation from a lawyer. A state court authorized this notice.

If you are a Washington healthcare provider who from July 8, 2012 through December 23, 2019, submitted medical bills for payment, under the terms of an insured’s Personal Injury Protection or Medical Payments coverage, to American Family Insurance Company or American Family Mutual Insurance Company and had your bills reduced based on an explanation code P0041, as set out in the Explanation of Remittance form you received, a class action settlement may affect you.

SUMMARY

- In the class action lawsuit referenced above, Dr. David Folweiler sued American Family Insurance Company and American Family Mutual Insurance Company (“Defendants”) alleging that, in connection with paying benefits under an insured’s Personal Injury Protection (“PIP”) or Medical Payments (“MedPay”) coverage, Defendants improperly reduced provider charges exceeding the 85th percentile¹ of charges contained in a medical charge database.
- Defendants have denied all of Plaintiff’s allegations and any other wrongdoing.
- After several years of litigation, the parties have agreed to settle the class action. You may be entitled to share in the cash settlement if you were a Washington healthcare provider who from July 8, 2012 through December 23, 2019 submitted medical bills for payment, under the terms of an insured’s Personal Injury Protection or MedPay coverage, to Defendants and had your bills reduced based on an explanation code P0041 (“Reason Code 41”) as set out in the Explanation of Remittance form you received.
- If you are a member of this class, you can submit a claim form to recover the amount of charges that were reduced between July 8, 2012 and December 23, 2019 for explanation Reason Code 41 if you have not already been reimbursed for those charges from another source and the insured’s limits of coverage have not already been exhausted.
- The court in charge of this case has not decided whether to finally approve the settlement; however, the court has preliminarily approved the settlement as fair, adequate and reasonable. Payments will take place if the court approves the settlement and after any appeals are resolved.

¹ Plaintiff initially alleged that charges were reduced to the 80th percentile, but Defendants subsequently disclosed that charges were actually reduced to the 85th percentile.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

Participate in the Settlement

If you wish to receive money from the settlement, you **must** file a claim form by **April 20, 2020**. You can file the claim form on-line at AmericanFamilyClassActionPIPSettlement.com.

Exclude Yourself from the Settlement

If you do not want to receive money from the settlement, but you want to keep your rights to sue Defendants separately, you **must** send a letter requesting exclusion postmarked no later than **February 10, 2020**.

Object to the Settlement

If you wish to object to the settlement, you must file a written objection with the court, and mail copies to Class Counsel and Defendants' Counsel stating your objections. Your letter to the court must be received no later than **February 10, 2020**.

Participate in a Hearing

You may appear in court and be heard at the time of the final approval hearing. If you submit a timely objection to the settlement, you must also indicate in the objection that you wish to appear in court and be heard at the time of the final fairness hearing.

Do Nothing

If you do nothing with respect to this notice, **you will not receive any money but you will still be bound by the terms of the settlement**, including the release of claims described below.

These rights and options, including the deadlines by which to exercise them, are explained in this Notice below.

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BASIC INFORMATION

1. What is this about?

A court authorized this notice because you have a right to know about a proposed settlement in the lawsuit known as *Folweiler v. American Family Insurance Company, et al.*, Case No. Case No. 16-2-16112-0 SEA which is pending in the Superior Court of King County, Washington.

On July 8, 2016, Dr. David Folweiler filed a putative class action against American Family Insurance Company on behalf of his business and a putative class of Washington providers alleging that American Family improperly reduced provider charges submitted under the terms of an insured's PIP or MedPay coverage. Plaintiff challenges Defendants' use of a medical charge database compiled and maintained by FAIR Health to evaluate the reasonableness of a provider's charges. Where a provider's charges exceeded the 85th percentile of charges contained in a medical charge database they were reduced to the 85th percentile. Defendants identified these reductions on the explanation of remittance as Explanation Code P0041 ("Reason Code 41"). Plaintiff claims that the Reason Code 41 reductions violated the Washington Consumer Protection Act and the Washington Insurance Code. The complaint sought damages and certification of a statewide class of medical providers.

Defendants moved to dismiss the lawsuit. Plaintiff filed a motion for summary judgment and to certify a putative class, and the parties engaged in discovery. On February 14, 2017, the lawsuit was dismissed but in 2018 an appellate court reversed the dismissal and reinstated the case. In September 2019, the parties engaged in two days of mediation with Stewart Cogan, a mediator in Seattle, and ultimately reached the settlement described in this notice.

Defendants have vigorously denied and continue to deny any wrongdoing and any liability, but elected to settle to avoid the continued burden and expense of litigation.

2. What businesses are involved in this settlement?

The Defendants in the lawsuit are American Family Insurance Company and American Family Mutual Insurance Company.

3. Why is this a class action?

In a class action, one or more people called the "Class Representative" (in this case, Dr. David Folweiler's business, Folweiler Chiropractic, PS,) sue on behalf of people who have similar claims. All these people are "Class Members" in a "Class." One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Defendants deny wrongdoing

Defendants vigorously denied, and continue to deny, all of the allegations of wrongdoing. The settlement is not an admission by Defendants of any fault, wrongdoing, or liability whatsoever. Defendants instead agreed to the settlement to eliminate the substantial burden, expenses and uncertainties of further litigation.

WHO IS IN THE SETTLEMENT CLASS

To see if you are eligible for benefits from this settlement, you first have to determine if you are a Class Member.

5. How do I know if I am a Class Member?

You may be a Class Member if you were a Washington healthcare provider who from July 8, 2012 through December 23, 2019 had your PIP or MedPay claims for reimbursement of medical expenses reduced by Defendants based on an explanation code P0041 as set out in the Explanation of Remittance form sent to the provider. If you are not sure whether you are included in the Class, you may call the Settlement Administrator, toll free at 1-855-961-0955 or visit AmericanFamilyClassActionPIPSettlement.com

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

6. What does the settlement provide?

Defendants have agreed to pay up to a total of \$6 million to settle this action. That amount includes all attorneys' fees and expenses and case contribution fees awarded by the court as well as the costs for administering the settlement ("Settlement Costs"). It also includes the payments to Class Members who submit timely and valid claims. Each Class Member who submits a valid and timely claim can recover an amount equal to the sum of Reason Code 41 reductions that Defendants took on each provider's bill(s) plus a multiplier. The multiplier is calculated by taking the difference between \$6 million and the Settlement Costs and dividing it by the total amount of Reason Code 41 reductions taken by Defendants (approximately \$2.9 million).

Class Counsel intend to ask the court for an award of attorneys' fees and expenses. Any amount awarded as fees or expenses by the court shall be paid by the Defendants. Defendants have agreed not to oppose any application that does not exceed two million dollars (\$2,000,000).

On behalf of the Class Representative, Class Counsel also intends to seek a case contribution fee not to exceed \$10,000. Defendants have agreed not to oppose Class Counsel's request for the case contribution fee up to that amount and will pay any fee awarded by the court.

HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

7. How do I file a claim?

To ask for a payment, you must complete and timely submit a claim form. If you have not received a Claim Form, you may request one by calling the Settlement Administrator at 1-855-961-0955 or visit the Settlement Website at AmericanFamilyClassActionPIPSettlement.com. Please read the instructions carefully, fill out the claim form, and submit it online or mail it postmarked no later than **April 20, 2020** to:

Folweiler v. American Family Insurance
c/o JND Legal Administration
PO Box 91209
Seattle, WA 98111

8. How much is my payment going to be?

In connection with medical bills paid by Defendants pursuant to PIP or MedPay coverage, you can recover the amount of Reason Code 41 reductions taken since July 8, 2012. An additional amount, currently estimated to be approximately 30-40% of your Reason Code 41 reductions, will be added to your refund. By way of example, if Defendants reduced a provider's medical bills covered by the settlement by a total of \$100 and that provider submits a timely and valid claim, she could recover \$100 plus an estimated \$30-\$40 for a total of \$130-\$140.

The exact amount of the multiplier is not yet known and will not be known until all of the Settlement Costs have been calculated.

9. When will I get my payment?

The payments will be mailed to eligible Class Members who send in timely and valid claim forms, after the court grants final approval of the settlement, any appeals are resolved, and the claims administration process is completed. If the court approves the settlement after the final hearing on February 19, 2020, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time. Please be patient.

10. What am I giving up to get a payment?

Unless you exclude yourself from the proposed settlement, you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants regarding any of the legal issues involved in the *Folweiler* litigation or that are included within the Released Claims. If you remain a Class Member, you will give a "release" to the Defendants (the "Released Claims") described in greater detail in section 11 below. In addition, if you remain a Class Member, all of the court's orders will apply to you and legally bind you.

The Settlement Agreement, which is available at AmericanFamilyClassActionPIPSettlement.com, describes the exact legal claims that you give up if you do not exclude yourself from the settlement.

RELEASE OF CLAIMS

11. What claims am I giving up?

As part of the Settlement Agreement, the Class Representative and all Class Members who do not exclude themselves from the Settlement agree to release the Defendants and all of their affiliates and other related persons and entities, from any claims, rights, demands, actions, causes of action, suits, Unknown Claims (as defined in paragraph 1.27 of the Settlement Agreement), debts, liens, contracts, liabilities, agreements, interest, costs, expenses, losses, or damages (whether actual, consequential, treble, statutory and/or punitive or exemplary or other), whether arising in law or equity, for or arising out of or related to (i) the allegations that were or could have been asserted by Plaintiff or the Settlement Class in this Lawsuit which relate in any way to the subject matter of the Lawsuit, which was Defendants' use of and the validity, reliability, and lawfulness of the FAIR Health medical charge database to assess whether a provider's bill exceeded the 80th and/or 85th percentile; or (ii) Defendants' review, handling, payment, adjustment or denial, in whole or in part, of claims for PIP or MedPay benefits through Defendants' use of the 80th or 85th percentile of the FAIR Health database.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to individually sue the Defendants about the issues in this case, then you must take steps to exclude yourself from the settlement. This is called “opting out” of the Settlement Class.

12. How do I exclude myself from this settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from *Folweiler v. American Family Insurance Company et al.*, Case No. 16-2-16112-0 SEA. You must include your full name, address, and your signature. You must also include a clear statement that you wish to be excluded from the Settlement Class. You must mail your request for exclusion postmarked by **February 10, 2020** to the address below. You cannot exclude yourself on the phone or by email.

Folweiler v. American Family Insurance
c/o JND Legal Administration
PO Box 91209
Seattle, WA 98111

13. If I do not exclude myself, can I still sue the Defendants?

No. Unless you exclude yourself, you give up any right to individually sue the Defendants for the claims that this settlement resolves. You must exclude yourself from this class to individually sue the Defendants over the claims resolved by this settlement. The deadline to exclude yourself is **February 10, 2020**.

14. If I exclude myself, can I still get a payment?

No. If you exclude yourself, you will not get a payment and you do not need to submit a claim form.

OBJECTING TO THE SETTLEMENT

15. What if I do not agree with the terms of the settlement?

If you are a Class Member (and **have not excluded yourself**), you can object to the settlement if you do not agree with its terms. You can give reasons why you think the court should not approve the settlement. You can also object to Class Counsel’s application for attorneys’ fees and expenses or the case contribution award to the Plaintiff.

To object to the settlement, you must mail a letter to the Clerk of the Court, Class Counsel and Defendants’ Counsel and include the following:

- (a) The name of this lawsuit (*Folweiler v. American Family Insurance Company et al.*, Case No. 16-2-16112-0 SEA);
- (b) Your full name, address and telephone number;
- (c) An explanation of the basis upon which you claim to be a Class Member;
- (d) All grounds for the objection, accompanied by any and all legal or factual support for the objection known to you or your counsel;

- (e) The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the settlement or fee application and all legal or factual support for such fees;
- (f) The identity of all counsel representing you who will appear at the final approval hearing (if any);
- (g) A statement confirming whether you intend to personally appear and/or testify at the final approval hearing; and
- (h) Your signature (an attorney's signature shall not be deemed sufficient to satisfy this requirement).

16. What is the difference between Objecting and Excluding?

Objecting is simply telling the court that you do not like something about the settlement. You can object only if you remain a Class Member. If you object, and the court approves the settlement anyway, you will still be bound by the result. Excluding yourself is telling the court that you do not want to be a Class Member. If you exclude yourself, you cannot object because the case no longer affects you.

THE LAWYERS REPRESENTING YOU

17. Do I need to get a lawyer?

The court has appointed David Breskin and Brendan Donckers of Breskin, Johnson & Townsend, PLLC as Class Counsel. You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and have that lawyer appear in court for you in this lawsuit, you may hire one at your own expense.

18. How will the lawyers be paid?

Class Counsel intends to submit a fee and expense application, seeking an award based on the value of the settlement and the work performed in an amount not to exceed two million dollars (\$2,000,000). Defendants have agreed not to oppose Class Counsel's fee and expense application up to this amount. The request for fees and expenses will be posted on the Settlement Website, AmericanFamilyClassActionPIPSettlement.com, after it is filed. The court currently is scheduled to decide whether to approve the motion at the final approval hearing.

THE COURT'S SETTLEMENT FINAL APPROVAL HEARING

The court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to.

19. When will the court decide whether to approve this settlement?

The court has scheduled a final approval hearing at 3:30 p.m., on February 19, 2020, in Courtroom 847 at 516 3rd Avenue, Seattle, Washington 98104. At this hearing, the court will consider whether the settlement is fair, reasonable, and adequate. During the hearing, the court may decide whether to approve the settlement. If there are objections, the court will consider them. The judge may listen to people who have asked to speak about an objection. The court may also decide to approve Class Counsel's fee and expense application and the Class Representative case contribution fee. It is not known how long the hearing or any decision will take. If the hearing is rescheduled, the new date and time will be available on the settlement website.

20. Do I have to attend the Hearing?

You may attend the final approval hearing if you wish, but you are not required to do so. Class Counsel will represent you and answer any questions the judge may have. If you filed a written objection, you or your lawyer acting on your behalf may attend the final approval hearing, but you are not required to do so, and must state in your objection that you would like the opportunity to be heard. You may also pay your own lawyer to attend, but it is not necessary to do so, unless you choose to have a lawyer appear on your behalf to object to the settlement.

IF YOU DO NOTHING

21. What happens if I do nothing?

If you do nothing, you will not receive a payment from the settlement. But, unless you exclude yourself, you will still be bound by the settlement and you will not be able to individually sue the Defendants for the claims resolved in the settlement. You will also be legally bound by all of the orders the court issues and judgments the court makes concerning the lawsuit.

GETTING MORE INFORMATION

22. How do I get more information?

This notice summarizes the proposed settlement. For more information, including copies of the Settlement Agreement, Claim Forms, and other legal documents, visit the settlement website at AmericanFamilyClassActionPIPSettlement.com, call the Settlement Administrator at 1-855-961-0955, or write to:

Folweiler v. American Family Insurance
c/o JND Legal Administration
PO Box 91209
Seattle, WA 98111

Please do not contact the court.