

IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI

SAMUEL R. CARTER, M.D.,)	
Individually and on behalf of all others)	
similarly situated,)	
)	
Plaintiff,)	Case No.: 23AO-CC-00118
)	
-vs-)	Division 3
)	
MERCY HEALTH, <i>et al</i> ,)	
)	
Defendants.)	

PLAINTIFF CLASSES’ MOTION TO APPROVE AND DISSEMINATE CLASS NOTICE

Plaintiff Samuel R. Carter, M.D. and the Plaintiff Classes move the Court for its order approving Plaintiffs’ final proposed Class Action Notice (“Notice”) in a form substantially identical to the Notice attached as Exhibit 1, along with the proposed Exclusion Request Form attached as Exhibit 2, and further requests the Court approve the plan of notice described herein.

The attached proposed Notice satisfies all requirements of Missouri Rule 52.08. It was drafted to be consistent with the model notices available for reference on the Federal Judicial Center website, which contains templates often used as models for class action notices.¹ It accurately describes the Court’s Certification Order, the classes certified, and uses neutral and easy to understand language to explain the Class Members’ options and rights at this stage of the litigation. The proposed Notice contains that required opt-out information as well as additional, helpful information for the class members. The out-out

¹ <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction>

procedure is straightforward and allows for a 60-day opt-out/notice period achieved through direct-mailed notice sent to the best available contact information for each Class Member, using the Mercy Defendants' records and any required follow-up searches.

The notice campaign also uses a website where class members can obtain information about the case and claims asserted by the Classes and can review pleadings and other relevant orders and documents. Plaintiffs have retained RG/2 Claims Administration ("RG/2") to distribute the Notice, maintain the website, process opt-out requests and aid Plaintiffs' counsel in providing follow-up reports to the Court as needed. The notice plan satisfies the requirements of the Missouri Rules and complies with Class Members' due process rights as described herein.

I. CLASSES CERTIFIED

On July 9, 2025, the Court entered its Order granting Plaintiff's Motion for Class Certification. Thereafter, Plaintiffs asked the Court to Amend the Class Definitions as follows:

Humana Class

All Missouri citizens who were non-employee primary care physicians who the Mercy Defendants included as network providers in connection with the Humana managed care and value-based contracts who have a net-positive total of Humana shared savings payment amounts, care coordination fee amounts, and quality payment amounts attributable to them during the period from January 1, 2016 through July 9, 2025.

Excluded from the class are Defendants, any entity in which Defendants have a controlling interest, any of the officers, directors, or employees of the Defendants, the legal representatives, heirs, successors, and assigns of the Defendants, anyone employed with Plaintiffs' counsels' firms, any Judge to whom this case is assigned,

and his or her immediate family. Also excluded from the class are any physicians who are subject to a valid and enforceable arbitration agreement with the Mercy Defendants.

Aetna Class

All Missouri citizens who were non-employee primary care physicians who the Mercy Defendants included as network providers in connection with the Aetna managed care and value-based contracts during the period from January 1, 2014 through 2023.

Excluded from the class are Defendants, any entity in which Defendants have a controlling interest, any of the officers, directors, or employees of the Defendants, the legal representatives, heirs, successors, and assigns of the Defendants, anyone employed with Plaintiffs' counsels' firms, any Judge to whom this case is assigned, and his or her immediate family. Also excluded from the class are any physicians who are subject to a valid and enforceable arbitration agreement with the Mercy Defendants.

The Notice is drafted for those amended class definitions.

II. ARGUMENT

A. Legal Standard

The Missouri Rules of Civil Procedure require that the notice provided in connection with a class action be “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Mo. R. Civ. P. 52.08(c)(2). Missouri Rule 52.08(c)(2) also requires that the notice advise each class member that:

- (A) The court will exclude the member from the class if requested by a specified date;
- (B) The judgment, whether favorable to not, will include all members who do not request exclusion; and

- (C) Any member who does not request exclusion may, if desired, enter an appearance through counsel.

Mo. R. Civ. P. 52.08(c)(2).

B. Plaintiffs' Proposed Notice

- i. Plaintiffs' Notice meets the requirements of Rule 52.08 and contains all of the necessary information to allow Class Members to make an informed decision.**

The proposed Notice contains the information required by Rule 52.08 as well as additional, helpful information for the Class Members. First, the Notice will be sent by direct mail to the last/best known addresses of all Class Members. The Class Members' contact information was initially obtained through the Mercy Defendants' records. As explained by the proposed Settlement Administrator, RG/2 Claims Administration, RG/2 will take that information and first process it to make sure it is up to date and correct based upon the best available information. Ex. 3, ¶¶ 7-8.² The Notice will then be mailed to the Class Members and if mail is returned undeliverable, RG/2 will perform "skip trace" searches to attempt and retrieve updated information, and mailings will be sent to the updated addresses. *Id.* at ¶ 9. Direct notice of this kind is recognized to be the best notice practicable by industry standards and relevant case law. *Id.* at ¶ 11.

Second, the Notice advises the Class Members that the Court will exclude them if requested by a specific date. The Notice tells Class Members what it means to request

² The affidavit of the Settlement Administrator was previously filed with the Court on August 15, 2025 in connection with Plaintiffs' Status Update to the Court. Plaintiffs have since moved to modify the class definitions referenced in the affidavit, but the notice plan remains the same.

exclusion, how to request exclusion, and the date by which they must request exclusion. Ex. 1 at p. 3 and Questions 13 and 14.

Third, the Notice advises the Class Members that the judgment, whether favorable or not, will include and apply to call Class Members who do not request exclusion. Ex. 1 at p. 3 and Questions 12 and 13.

Finally, the Notice advises that any Class Member who does not request exclusion may, if desired, enter an appearance through counsel. Ex. 1 at Questions 16 and 19. Thus, all the requirements of Rule 52.08(c)(2) are met.

Additionally, the Notice provides the Class Members valuable information about the case, the facts and allegations, what a class action is, and other helpful information to aid in their decision of whether to remain in the classes. The Notice provides a summary of the case and the parties' positions and highlights that Class Members' legal rights may be affected. Ex. 1 at pp. 1-3. It describes what the case is about, who is involved, and why the case is a class action in the first place. Ex. 1 at Questions 1-4. It discloses the relief Plaintiffs are seeking in terms of damages and costs. *Id.* at Questions 5, 8 and 17. It explains when and how the case will be tried to a jury, where the trial will take place, and that Class Members need not attend. *Id.* at Questions 18-20. It explains that Class Members will be notified if any money is recovered for them. *Id.* at Question 20.

The Notice has a neutral tone and is written in easy-to-understand language and formatting. It provides information about why a class member may want to opt out, the consequences of opting out or not opting out, and the deadline for opting out is listed multiple times. It explains that the Notice is a Court-authorized notice and not a solicitation

from lawyers, so that Class Members are less inclined to discard it quickly without review. It invites Class Members to visit the website for more information and informs them that they may contact Class Counsel directly if they have questions about whether they are in the classes or any other questions about the Notice or the case. For all these reasons, the Notice meets the requirements of Rule 52.08 and due process.

ii. The opt-out procedure is straightforward and not burdensome.

The Notice provides for a simple and easy process for opting out of the Classes. To opt out/request exclusion, the Class Members need only send a basic statement that they wish to be excluded, with his/her name and contact information, in a letter signed by the Class Member or their attorney. Ex. 1 at Question 14. The Notice will include an Exclusion Request Form the Class Members can use. Ex. 2. It allows for the exclusion request to be sent by mail, email or fax. Ex. 1 at Question 14. The Notice and exclusion time also respect the Class Members' due process rights, providing 60 days to request exclusion. *See. e.g., Gerken v. Sherman*, 276 S.W.3d 844, 854 (Mo. App. 2009) (noting 30 days to opt out was appropriate when agreed to).

iii. The planned administration of the Notice is appropriate and sufficient.

As explained in the prior notice filings, Plaintiffs have also been working with RG/2 on how the notice campaign will be carried out. The affidavit of the Settlement Administrator, RG/2, provides details on the direct mail notice plan, which is the best notice practicable under the circumstances, and which is intended to provide individual notice to all class members who can be identified through reasonable effort, in accordance

with Rule 52.08. Ex. 3. It outlines how RG/2 will implement the direct mailed notice plan and how they will follow up with additional notice efforts for any mailings that are returned undeliverable. As set forth in the Notice, RG/2 will also develop and maintain the website that will contain material information about the case. Finally, if Class Members have any confusion or additional questions, they are directed to ask questions of Class Counsel as needed, which should ensure there is minimal confusion in connection with the notice campaign.

III. CONCLUSION

Plaintiffs respectfully request that the Court grant this motion and approve the proposed Notice and Exclusion Request Form, attached as Exhibit 1 and Exhibit 2, together with the notice plan affording Class Members 60 days to opt out, and for such other and further relief as the Court deems proper.

Dated: October 9, 2025

Respectfully submitted by:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of October 2025, the foregoing document was e-filed with the Clerk of the Court by using the Missouri eFiling System, which sent notification of such filing to all counsel of record.

/s/Brandon J.B. Boulware

*Attorney for Plaintiffs and the
Classes*