

Proposed Settlement Terms (OHA Counter-Proposal 3/22/2016)

Oregon Health Authority (OHA) and FamilyCare, Inc. (FC) (together, the "parties") have entered into Oregon Health Plan Health Plan Services Contract No. 143114 (the "Contract") effective January 1, 2014. The Contract is for FC's operation of a Coordinated Care Organization (CCO) and delivery of health care services for Oregon Health Plan (OHP) members by FC. The Contract has a five-year term expiring December 31, 2018.

The parties desire to enter into a Settlement Agreement to settle all FC's actual and potential claims regarding the 2015 and 2016 rates. OHA and FC agree that the Settlement Agreement will have substantially the following terms:

A. OHA Undertakings and Obligations:

OHA desires to move forward with health systems transformation as a partner with FC and the other CCOs. Accordingly, OHA agrees as follows:

1. To the extent such a methodology is consistent with then-existing CMS guidance and regulations, OHA will develop ACA rates for 2017 using encounter data and health status based risk adjustments.
2. OHA will comply with all state and federal regulations and laws pertaining to CCO contracts and rates. Nothing in this agreement is intended to or does suggest that OHA has failed to comply with such regulations and laws in the past.
3. OHA will timely pay FC its quality pool payments pertaining to 2015 services, without recovery of any overpayment from the quality pool payments.
4. OHA will continue its commitment to increased transparency and promptness in the rate-setting process. This will include a process whereby OHA's actuaries share analyses and data with the CCOs and suggestions will be solicited from the CCOs. However, the ultimate decisions on rates will remain subject to approval by CMS, OHA, and OHA actuaries.
5. OHA will pay FC revised rates for the Affordable Care Act ("ACA") population for 2015. The revised rates will be developed by OHA's actuary firm, Optumas, by adopting a 100% payment percentile (i.e., the top of the CMS-approved rate ranges certified by Optumas for 2015), with no changes to the cost relativity factor or any other component of rate methodology ("2015 Revised ACA Rates"). A matrix showing the 2015 Revised ACA Rates will be attached to the Settlement Agreement.
6. OHA will offer FC a revised contract amendment for 2015 retroactive to January 1, 2015 containing the 2015 Revised ACA Rates ("Revised 2015 Contract Amendment"). All other terms not inconsistent with this Settlement Agreement, including the rates for the non-ACA populations, in the Revised 2015 Contract Amendment will be the same as those set forth in the August 2015 contract amendment (Contract No. 143114-6). After

receiving FC's signature, OHA will sign the Revised 2015 Contract Amendment, subject to CMS approval.

7. OHA will submit the Revised 2015 Contract Amendment to CMS for approval along with any additional support from its actuary that OHA deems helpful to obtain approval from CMS of the Revised 2015 Contract Amendment. OHA will make a good faith effort to obtain CMS approval of the Revised 2015 Contract Amendment, including without limitation, responding to any questions CMS may have regarding the Revised 2015 Contract Amendment and providing any additional supporting documentation required by CMS. OHA will send FC copies of all written communications with CMS concerning the Revised 2015 Contract Amendment.

8. Effective upon OHA receipt of written notice that CMS has approved the Revised 2015 Contract Amendment, OHA will provide FC with a credit of \$8,000,000 (Eight Million Dollars) (the "Settlement Amount"), to be applied to reduce the Overpayment described below. OHA will credit the Settlement Amount from previously appropriated state general funds as a one-time litigation settlement.

9. OHA will not alter the actuarial methodology submitted to and approved by CMS for 2015 or the actuarial methodology submitted by OHA for approval by CMS for 2016.

10. OHA will withdraw in writing its March 14, 2016 Notice of Default and Breach (the "Notice"), subject to possible reinstatement under paragraph B.4.iv below.

B. FamilyCare Undertakings and Obligations:

FC desires to move forward with health systems transformation as a partner with OHA and the other CCOs. Accordingly, FC agrees as follows:

1. FC will sign the Revised 2015 Contract Amendment, subject to CMS approval. If CMS does not approve the Revised 2015 Contract Amendment, the Revised 2015 Contract Amendment will be considered null and void as if never signed by the parties.

2. Within ten (10) business days of receipt of written notice that CMS has approved the Revised 2015 Contract Amendment:

a) FC will pay to OHA an amount estimated to equal forty-seven million, three hundred and twenty-three thousand, six hundred and sixty-four dollars (\$47,323,664.00) ("Overpayment"), reduced by the Settlement Amount (after reduction, the "Net Overpayment"). The Overpayment is the difference between the amounts paid by OHA to FC under the existing 2015 contract (Contract No. 143114-4) and the amount owed under the Revised 2015 Contract Amendment, net of Hospital Reimbursement Adjustment amounts. The exact amount of the Overpayment will be calculated by Optumas and furnished by OHA to FC. An attachment to the Settlement Agreement will show the calculation of this Overpayment amount. Payment by FC of the Net Overpayment will be considered full and final satisfaction of all amounts FC owes OHA pursuant to the Revised 2015 Contract Amendment;

b) FC will voluntarily dismiss its lawsuit against OHA with prejudice and without an award of costs or fees to either party. OHA will cooperate with FC in obtaining this dismissal including, without limitation, refraining from pursuing an award of costs or fees;

c) FC will retract in writing its signed notices of breach of contract pertaining to the 2014 and 2015 contract amendments; and

d) FC will accept the Settlement Agreement, without condition or reservation, as consideration for settling all of its actual and potential claims regarding the 2014, 2015, or 2016 rates. FC understands that OHA's crediting of the Settlement Amount is a one-time-only settlement of litigation and is not a precedent for any other situation involving FC or any other CCO.

3. At or before the status conference scheduled for April 7, 2016, FamilyCare will file a motion to hold the lawsuit, including all discovery, in abatement pending CMS approval of the Revised 2015 Contract Amendment. The motion will not describe the nature of the settlement, but will inform the court that settlement has been reached pending CMS approval, and if that approval is forthcoming, the case will be dismissed.

4. For years 2016, 2017 and 2018, FC will accept the rate methodology that OHA applies to the other CCOs in Oregon and not seek to be treated differently from any other CCO.

C. Mutual Undertakings and Obligations:

The parties further mutually agree as follows:

1. The parties will cooperate fully and professionally with one another in Health Systems Transformation;

2. This proposal does not waive or alter any terms or conditions of FC's CCO Contract except as expressly provided herein;

3. Upon receipt of notice from CMS of approval of the Revised Contract Amendments, FC and OHA will promptly execute a Release Agreement in the form attached to the Settlement Agreement.

4. If CMS provides notice that it will not approve the Revised 2015 Contract Amendment, then:

- i) The Revised 2015 Contract Amendment will be considered null and void as if never signed by the parties
- ii) All remaining obligations under the Settlement Agreement will be considered null and void, with the exception of the below obligation to seek to negotiate a new solution;

- iii) The parties will negotiate in good faith (including at least one in-person meeting) for a period seven (7) calendar days to determine if they can reach an alternative resolution of their dispute; and
- iv) If the parties are unable to reach resolution at the end of the seven (7) calendar day period, OHA may reissue its Notice with a new 14 day cure period, if desired.

By 5pm seven calendar days after FC and OHA execute and deliver these Settlement Terms, FC and OHA will negotiate, execute, and deliver a mutually acceptable form of Settlement Agreement setting forth these Settlement Terms in legally binding form (the "Settlement Agreement"). Until the Settlement Agreement has been executed and delivered by FC and OHA, the Settlement Terms here are a statement of intent only and are not legally binding.

FamilyCare, Inc.

By:

Jeff Heatherington
Chief Executive Officer
Date: _____

**State of Oregon
Oregon Health Authority**

By:

Lynne Saxton
Oregon Health Authority
Date: _____

APPROVED AS TO FORM:

DATED this _____ day of March, 2016 _____
Kelly Knivila, OSB #923583
Attorney for FamilyCare, Inc.

DATED this _____ day of March, 2016 _____
Renee Stineman, OSB #994610
Attorney for State of Oregon,
Oregon Health Authority