



**DEPARTMENT OF JUSTICE**  
TRIAL DIVISION

July 14, 2017

AllCare CCO, Inc.  
c/o Registered Agent  
1701 NE 7<sup>th</sup> Street  
Grants Pass, OR 97526

Pacific Source Community Solutions  
c/o Registered Agent  
2965 NE Conners Ave.  
Bend, OR 97701

Cascade Health Alliance, LLC  
c/o Registered Agent  
2909 Daggett Ave, Ste. 225  
Klamath Falls, OR 97601

PrimaryHealth  
c/o Registered Agent  
1867 Williams Hwy Ste 108  
Grants Pass, OR 97527

Columbia Pacific CCO, LLC  
c/o Registered Agent  
315 SW Fifth Ave.  
Portland, OR 97204

Trillium Community Health Plan, Inc.  
c/o Registered Agent  
7700 Forsyth Blvd Ste 800  
Saint Louis, MO 63105

Eastern Oregon CCO, LLC  
c/o Registered Agent  
1127 Broadway St., NE, STE 310  
Salem, OR 97204

Umqua Health Alliance  
c/o Registered Agent  
1813 W. Harvard Ave. Ste 448  
Roseburg, OR 97471

Jackson Care Connect  
c/o Registered Agent  
315 SW Fifth Ave  
Portland, OR 97204

Western Oregon Advanced Health, LLC  
c/o Registered Agent  
289 LaClair Street  
Coos Bay, OR 97420

Health Share of Oregon  
c/o Registered Agent  
2121 SW Broadway STE 200  
Portland, OR 97201

Willamette Valley Community Health, LLC  
c/o Registered Agent  
2995 Ryan DR SE STE 200  
Salem, OR 97301

Intercommunity Health Network CCO  
c/o Registered Agent  
815 NW 9<sup>th</sup> St., Ste.103  
Corvallis, OR 97330

Yamhill Community Care  
c/o Registered Agent  
807 NE Third Street  
McMinnville, OR 97128

Re: *FamilyCare, Inc. v. Oregon Health Authority*  
Marion County Circuit Court Case No. 17CV09226

July 14, 2017

Page 2

Dear Registered Agent:

This office represents Oregon Health Authority in the above-referenced lawsuit brought by FamilyCare. In conjunction with the lawsuit, OHA has received the enclosed request for production from FamilyCare seeking to obtain certain documents provided by you to OHA.

OHA intends to comply with its discovery obligations in the lawsuit. However, OHA understands you may want to seek protection for your possible trade secrets. To address these two potentially competing interests, OHA issued the enclosed objections to certain of FamilyCare's requests on the grounds that they seek documents of third parties that may be trade secret. However, whether a document is appropriately considered trade secret is a fact-based analysis, the outcome of which may vary from CCO to CCO in this case. OHA does not possess all the facts necessary to accurately determine which of the documents FamilyCare seeks to obtain may be, or in fact are, trade secrets of third parties. This determination should be made initially by you and then, if necessary, by the Court. Therefore, subject to a court order or other legal requirement to the alternative, OHA will refrain from producing any responsive documents provided by you to OHA until after July 28, 2017, to allow for you to decide whether you will seek to protect documents from further disclosure, or seek exemption from discovery from the Court. We have enclosed for your reference the stipulated protective order entered in the lawsuit.

If you take no action by July 28, OHA intends to proceed with its discovery obligations, which may result in production of documents originally received from CCOs to FamilyCare. If, by July 28, you take appropriate steps to protect your documents or seek exemption from discovery, upon request, OHA will consider any objections or proposed alternatives to production.

If you would like to discuss this matter further, please contact me, or if you are represented by counsel, please have your counsel contact me.

Sincerely,

*s/ Renee Stineman*

Renee Stineman  
Attorney-in-Charge

Enclosures

8380492-v1/RS7/c4m

cc: FamilyCare, Inc., c/o Counsel of Record

1  
2  
3  
4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
5 FOR THE COUNTY OF MARION  
6

7 FAMILYCARE, INC., an Oregon non-  
8 profit corporation,

9 Plaintiff,

10 v.

11 OREGON HEALTH AUTHORITY, an  
12 agency of the State of Oregon,

13 Defendant.

Case No. 17CV09226

**PLAINTIFF FAMILYCARE INC.'S  
FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO  
DEFENDANT OREGON HEALTH  
AUTHORITY**

14 Pursuant to ORCP 36 and 43, Plaintiff FamilyCare, Inc. (“FamilyCare”) hereby requests  
15 that Defendant Oregon Health Authority (“OHA”) produce the documents described herein for  
16 inspection and copying at the offices of Plaintiff’s counsel, Perkins Coie LLP, 1120 NW Couch  
17 Street, Tenth Floor, Portland, Oregon, 97209, or at such other location as may be determined by  
18 agreement, within thirty (30) days of this request. Please respond to each request for production  
19 in accordance with the instructions and definitions set forth below.

20 **DEFINITIONS**

21 As used in these Requests, the following terms are defined as such:

22 1. “2017 Base Data Policy” shall mean the Base Data Policy as discussed in  
23 Appendix VIII, 2017 Reimbursement Review, of the 2017 Actuarial Certification.

24 2. “2017 Capitation Rates” shall mean the capitated rates for the Oregon CCOs for  
25 the 2017 rating period, as reflected in the 2017 Actuarial Certification.  
26

1           3.       “2017 Actuarial Certification” shall mean the document titled “Oregon Health  
2 Authority CCO Rate Development Actuarial Certification January 1 – December 31, 2017  
3 Capitation Rates,” attached as Exhibit 3 to the Complaint in this Action.

4           4.       “2017 Reimbursement Review” shall mean the document titled “2017  
5 Reimbursement Review” attached as Appendix VIII to the 2017 Actuarial Certification within  
6 Exhibit 3 to the Complaint in this Action.

7           5.       “Action” means the present litigation entitled *FamilyCare, Inc. v. Oregon Health*  
8 *Authority*, No. 17CV09226.

9           6.       “Actuarial Soundness” shall refer to any accepted actuarial principles and  
10 practices relied on by OHA in developing the 2017 Capitation Rates.

11          7.       “Base Data” shall refer to the base data described in Section 2.02 of the 2017  
12 Actuarial Certification.

13          8.       “Base Data Adjustments” shall refer to the base data adjustments described in  
14 Section 2.03 of the 2017 Actuarial Certification..

15          9.       “CareOregon” shall refer to CareOregon, Inc. and any past and present agents,  
16 representatives, accountants, actuaries, attorneys, employees, including former employees,  
17 subsidiaries, any members, partners, or risk-accepting entities, or any other person or entity that  
18 has documents deemed to be in its possession, custody, or control, and including such entity  
19 under its prior names and in any form of a domestic or foreign limited liability corporation,  
20 partnership, or corporation.

21          10.       “CMS” shall mean the Centers for Medicare & Medicaid Services and any past  
22 and present agents, representatives, accountants, actuaries, attorneys, employees, including  
23 former employees, subsidiaries, or any other person or entity that has documents deemed to be in  
24 its possession, custody, or control.

25          11.       “Communicate” or “Communication(s)” shall refer to any transmission or  
26 exchange of information between two or more persons, orally or in writing, and includes, but is

1 not limited, to all conversations or discussions, whether such communication or discussion  
2 occurred face-to-face or by means of letter, telephone, telegraph, telecopier, telex, facsimile,  
3 electronic mail (“email”), or other media.

4 12. “Coordinated care organization” or “CCO” shall means an organization meeting  
5 criteria adopted by the Oregon Health Authority under ORS 414.625.

6 13. “Document” means all items that are considered to be “documents” or tangible  
7 things within the meaning of Rule 43 of the Oregon Rules of Civil Procedure and refers to the  
8 original and all copies of written, printed, typed, recorded, computer generated or graphic matter,  
9 or other instrument(s) or device(s) which contain information or from which information can be  
10 retrieved, including, without limitation, any kind of written, typewritten, or printed material  
11 whatsoever, any kind of graphic material, and any computer applications, memoranda,  
12 correspondence, studies, working papers, letters, telegrams, invoices, personal diaries,  
13 handwritten notes of any kind including Post-it® notes, reports, records, books forms, indexes,  
14 transcriptions and recordings, magnetic tapes, video tapes, wire recordings, disks and printed  
15 cards, data sheets, data processing cards, personal calendars, interoffice memoranda, minutes and  
16 records of any sorts of meetings, financial statements, financial calculations, estimates, reports of  
17 telephone or other oral conversations, appointment books, maps, drawings, charts, graphs,  
18 photographs, and all other writings and recordings of every kind, however produced or  
19 reproduced, whether signed or unsigned. The terms “document” and “documents” include,  
20 without limitation, originals and all file copies that are not identical to the original no matter how  
21 or by whom prepared, and all drafts prepared in connection with any documents, whether used or  
22 not. If the original of any documents is not in your possession, custody, or control, a copy of that  
23 document should be produced. A draft or non-identical copy is a separate document within the  
24 meaning of this term.

25 14. The terms “FamilyCare” or “Plaintiff” shall refer to plaintiff FamilyCare, Inc.  
26

1           15.     “Health Management Associates” shall refer to “Health Management Associates,  
2 Inc.” and any past and present agents, representatives, accountants, attorneys, employees,  
3 including former employees, or any other person or entity that has documents deemed to be in its  
4 possession, custody, or control, and including such entity under its prior names and in any form  
5 of a domestic or foreign limited liability corporation, partnership, or corporation.

6           16.     “Health Share” shall refer to “Health Share of Oregon” and any past and present  
7 agents, representatives, accountants, attorneys, employees, including former employees, any  
8 members, partners, or risk-accepting entities, or any other person or entity that has documents  
9 deemed to be in its possession, custody, or control, and including such entity under its prior  
10 names and in any form of a domestic or foreign limited liability corporation, partnership, or  
11 corporation.

12           17.     “Optumas” shall refer to Optumas and/or Schramm Health Partners, L.L.C., and  
13 any past and present agents, representatives, accountants, attorneys, employees, including former  
14 employees, or any other person or entity that has documents deemed to be in its possession,  
15 custody, or control, and including such entity under its prior names and in any form of a  
16 domestic or foreign limited liability corporation, partnership, or corporation.

17           18.     The terms “Oregon Health Authority”, “Defendant”, “You”, and/or “Your” shall  
18 refer to the Oregon Health Authority, both separately and jointly, and any past and present  
19 agents, representatives, accountants, attorneys, employees, including former employees, or any  
20 other person or entity that has documents deemed to be in its possession, custody, or control.

21           19.     “Rate Development Standards” shall refer to the rate development standards as  
22 set forth in 42 CFR § 438.5(a)-(g) (May 6, 2016).

23           20.     “Regional Rate Model” shall refer to the rate development process used by  
24 Optumas described in Section 2.01 of the 2017 Actuarial Certification.



1 Requests for Production of Documents extend to correspondence and electronic communications  
2 sent from or received at a personal physical address or personal email address.

3 B. Unless otherwise specified, the time period covered by these Requests for  
4 Production of Documents is January 1, 2014, to the present. However, if a document prepared  
5 prior to January 1, 2014, or subsequent to the date of these Requests for Production of  
6 Documents refers to events during the period January 1, 2014, through the present, and/or is  
7 necessary for a correct or complete understanding of any document covered by these Requests  
8 for Production of Documents, the document shall be produced. If any document is undated and  
9 the date of its preparation cannot be determined, the document shall be produced if it is  
10 otherwise responsive to these Requests for Production of Documents and no evidence exists to  
11 conclusively establish that this document was prepared prior to January 1, 2014.

12 C. Each document request, and the portions thereof, is to be responded to separately,  
13 but responses to one document request, or portion thereof, may be incorporated by reference in  
14 responses to other document requests, or portions thereof.

15 D. All documents produced pursuant to these Requests for Production of Documents  
16 shall be produced either in separate groups of documents responsive to each separate document  
17 request or in the form and order in which they were kept by you before being produced.

18 E. Each request for documents, whether memoranda, reports, letters, minutes,  
19 emails, or other documents of any description, requires the production of each document in its  
20 entirety, including all pages and attachments or exhibits, without redaction or expurgation.

21 F. If a document was prepared in several copies or if additional copies were  
22 thereafter made, and if such copies were not identical or are no longer identical by reason of any  
23 notation or modification of any kind whatsoever located on either the front or the back of such  
24 document, then each non-identical copy is a separate document and must be separately identified  
25 and produced.

26



1 G. If you claim any document request herein is ambiguous, describe in what way the  
2 request is ambiguous, state the meaning applied to the request, and respond to the request as  
3 interpreted.

4 H. If you claim any form of privilege, whether based on statute or otherwise, as a  
5 ground for not producing requested documents, please furnish a log providing the following  
6 information with respect to each withheld document:

- 7 i. the date of the document;
- 8 ii. for each individual who prepared, produced, reproduced, or received the  
9 document for which the privilege is claimed, state the person's name,  
10 current (or last known) business and residence addresses, current (or last  
11 known) business and residential telephone numbers, current (or last  
12 known) title or position, and occupation;
- 13 iii. describe the document in sufficient detail to identify it without revealing  
14 the information for which the privilege is claimed; and
- 15 iv. state every fact or basis upon which you claim any such privilege.

16 I. These document requests are continuing and, to the extent required by the Oregon  
17 Rules of Civil Procedure, you must immediately produce any responsive documents or  
18 information after any such document(s) or information comes within your possession, custody,  
19 or control throughout the pendency of this action.

20 J. Documents shall be produced in Tagged Image File Format ("TIFF"), single page,  
21 black and white (or in color, if necessary for any given document or its content to be readable),  
22 dithered (if appropriate), at 300 x 300 dpi resolution and 8½ x 11 inch page size, except for  
23 documents requiring different resolution or page size to make them readable. Each TIFF  
24 document shall be produced with an image load file in standard Opticon (\*.log) format that  
25 reflects the parent / child relationship. In addition, each TIFF document shall also be produced  
26 with a data load file in Concordance delimited format (\*.dat), indicating (at a minimum)

1 appropriate unitization of the documents, including beginning and ending production numbers  
2 for (a) each document set, and (b) each attachment within each document set. The TIFF images  
3 shall also be accompanied by extracted text or, for those files that do not have extracted text  
4 upon being processed (such as hard copy documents), optical character recognition (“OCR”) text  
5 data; such extracted text or OCR text data shall be provided in document level form and named  
6 after the TIFF image. Documents that contain redactions shall be OCR’d after the redaction is  
7 applied to the image, and the OCR will be produced in placed of extracted text at the document  
8 level. Notwithstanding the foregoing, the parties may negotiate a separate production format  
9 (including native format) for any documents that are not reasonably producible or readable as  
10 standard image files, such as audio files or large spreadsheets.

11 K. For documents produced in TIFF format that originated in electronic form,  
12 metadata shall be included with the data load files described above, and shall include (at a  
13 minimum) the following information: file name (including extension); original file path; page  
14 count; creation date and time; last saved date and time; last modified date and time; author;  
15 custodian of the document (that is, the custodian from whom the document was collected or, if  
16 collected from a shared drive or server, the name of the shared driver or server); and MD5 hash  
17 value. In addition, for email documents, the data load files shall also include the following  
18 metadata: sent date; sent time; received date; received time; “to” name(s) and address(es);  
19 “from” name and address; “cc” name(s) and address(es); “bcc” name(s) and address(es); subject;  
20 names of attachment(s); and attachment(s) count. All images and load files must be named or  
21 foldered in such a manner that all records can be imported without modification of any path or  
22 file name information.

## 23 **REQUESTS FOR PRODUCTION**

24 **REQUEST FOR PRODUCTION NO. 1:** All documents submitted by OHA or its actuarial  
25 consultants (including, but not limited to, Optumas) to CMS relating to the Rate Development  
26

1 Standards for each CCO and the trend models for each CCO in connection with the 2017  
2 Capitation Rates.

3  
4 **Response:**

5 **REQUEST FOR PRODUCTION NO. 2:** All communications and worksheets, workbooks,  
6 spreadsheets, models, and documents that OHA or its actuarial consultants (including, but not  
7 limited to, Optumas) used or considered when evaluating or determining the Actuarial  
8 Soundness of the 2017 Capitation Rates.

9  
10 **Response:**

11  
12 **REQUEST FOR PRODUCTION NO. 3:** All communications related to and data used or  
13 considered by OHA or its actuarial consultants (including, but not limited to, Optumas) in  
14 connection with the 2017 Capitation Rates.

15  
16 **Response:**

17  
18 **REQUEST FOR PRODUCTION NO. 4:** All communications related to, and reports,  
19 memoranda, models, and documents prepared by, OHA's actuarial consultants (including, but  
20 not limited to, Optumas) in connection with the 2017 Capitation Rates.

21  
22 **Response:**

23 **REQUEST FOR PRODUCTION NO. 5:** All documents and data supporting the Regional  
24 Rate Model for the region in which FamilyCare operates.

25  
26

1 **Response:**

2  
3 **REQUEST FOR PRODUCTION NO. 6:** All documents reflecting or relating to OHA's  
4 policy decisions that affected the development of the 2017 Capitation Rates, including, but not  
5 limited to, policy decisions pertaining to lowering rates based on a CCO's payments to primary  
6 care providers or any decisions pertaining to the 2017 Base Data Policy.

7  
8 **Response:**

9 **REQUEST FOR PRODUCTION NO. 7:** To the extent documents are not provided in  
10 response to the foregoing requests, all communications or documents related to the calculation of  
11 Base Data Adjustments, including any consideration of a CCO's past or current profitability,  
12 analysis of CCO financial statements, and consideration of reported expenditures, in connection  
13 with the 2017 Capitation Rates.

14  
15 **Response:**

16  
17 **REQUEST FOR PRODUCTION NO. 8:** All documents recording or reflecting any written or  
18 verbal communication between OHA and Health Share regarding capitation rates from  
19 January 1, 2013, to present.

20  
21 **Response:**

22  
23 **REQUEST FOR PRODUCTION NO. 9:** All documents recording or reflecting any written or  
24 verbal communication between OHA and CareOregon regarding capitation rates from January 1,  
25 2013, to present.

1 **Response:**

2  
3 **REQUEST FOR PRODUCTION NO. 10:** To the extent documents are not provided in  
4 response to the foregoing requests, all documents recording or reflecting any written or verbal  
5 communication between OHA and Jeremy Vandehey regarding capitation rates from 2015 to  
6 present.

7  
8 **Response:**

9 **REQUEST FOR PRODUCTION NO. 11:** To the extent documents are not provided in  
10 response to the foregoing requests, all documents recording or reflecting any written or verbal  
11 communication between OHA and any leadership or staff employee at Health Management  
12 Associates regarding capitation rates from 2015 to present.

13  
14 **Response:**

15  
16 **REQUEST FOR PRODUCTION NO. 12:** All versions of any document reflecting the  
17 Regional Rate Model for each of the four rating regions within Oregon for the calendar years  
18 2015, 2016, and 2017.

19  
20 **Response:**

21  
22 **REQUEST FOR PRODUCTION NO. 13:** Any documents relating to, reflecting, or  
23 containing the Base Data for each of the 16 CCOs in Oregon.

24  
25 **Response:**

1 **REQUEST FOR PRODUCTION NO. 14:** Any documents relating to, reflecting, or  
2 containing the regional base data and risk factors and/or raw risk score data for each of the four  
3 rating regions within Oregon.  
4

5 **Response:**

6 **REQUEST FOR PRODUCTION NO. 15:** All documents recording or reflecting any  
7 communication, written policies, documents, and data regarding any adjustments made by or at  
8 the direction of OHA or by Optumas to FamilyCare's reported costs for the calendar years 2015,  
9 2016, and 2017.  
10

11 **Response:**

12 **REQUEST FOR PRODUCTION NO. 16:** All documents recording or reflecting any written  
13 or verbal communications regarding FamilyCare between: Lynne Saxton, Rhonda Busek, David  
14 Rohrer, Dennis Tang, and/or Jeremy Vandehey, Lori Coyner, Leslie Clement, amongst  
15 themselves individually or collectively, or with or including any other person.  
16  
17

18 **Response:**

19 **REQUEST FOR PRODUCTION NO. 17:** All documents recording or reflecting any  
20 communication between OHA and Optumas regarding the 2015, 2016, and 2017 capitation rates.  
21  
22

23 **Response:**

24 **REQUEST FOR PRODUCTION NO. 18:** All documents recording or reflecting any  
25 communication between OHA and CMS regarding the 2015, 2016, and 2017 capitation rates.  
26

1 **Response:**

2  
3 **REQUEST FOR PRODUCTION NO. 19:** All documents provided to OHA by each and every  
4 CCO in Oregon that relate to each and every CCO's income, expenses, and profitability,  
5 including, but not limited to, the income, expenses, and profitability of each and every CCO's  
6 related entities.

7  
8 **Response:**

9 **REQUEST FOR PRODUCTION NO. 20:** All documents recording or reflecting  
10 communications between OHA and Optumas regarding the 2017 Actuarial Certification, the  
11 information contained therein, or the information on which the 2017 Rate Certification was  
12 based.

13  
14 **Response:**

15  
16 **REQUEST FOR PRODUCTION NO. 21:** All documents recording or reflecting internal  
17 communications related to the 2017 Actuarial Certification, the information contained therein, or  
18 the information on which it was based.

19  
20 **Response:**

21  
22 **REQUEST FOR PRODUCTION NO. 22:** All drafts of the 2017 Actuarial Certification.

23  
24 **Response:**

25 **REQUEST FOR PRODUCTION NO. 23:** All drafts of the 2017 Reimbursement Review.

1 **Response:**

2  
3 **REQUEST FOR PRODUCTION NO. 24:** All documents recording or reflecting  
4 communications within OHA related to the 2017 Reimbursement Review, its implementation,  
5 the policy decisions reflected therein, or the information on which it was based.

6  
7 **Response:**

8 **REQUEST FOR PRODUCTION NO. 25:** All documents recording or reflecting  
9 communications involving OHA related to the 2017 Reimbursement Review, its implementation,  
10 the policy decisions reflected therein, or the information on which it was based.  
11

12 **Response:**

13  
14 **REQUEST FOR PRODUCTION NO. 26:** All documents recording or reflecting  
15 communications between OHA and Optumas related to the 2017 Capitation Rates, including but  
16 not limited to the development of those rates.  
17

18 **Response:**

19 **REQUEST FOR PRODUCTION NO. 27:** All documents recording or reflecting internal  
20 communications related to the 2017 Capitation Rates, including but not limited to the  
21 development of those rates.  
22

23 **Response:**  
24  
25  
26



1 **REQUEST FOR PRODUCTION NO. 28:** All documents recording or reflecting  
2 communications involving OHA related to the 2017 Capitation Rates, including but not limited  
3 to the development of those rates.  
4

5 **Response:**

6 **REQUEST FOR PRODUCTION NO. 29:** All documents recording or reflecting any  
7 communication, written policies, documents, and/or data involving the Settlement Agreement,  
8 effective as of May 22, 2106, entered into between OHA and FamilyCare.  
9

10 **Response:**

11  
12 **REQUEST FOR PRODUCTION NO. 30:** All documents recording or reflecting any  
13 communication, written policies, documents, and/or data communicating CCO cost, utilization  
14 and/or performance related to the Quality and Health Outcomes Committee of the Office of  
15 Clinical Services Improvement.  
16

17 **Response:**

18  
19 **REQUEST FOR PRODUCTION NO. 31:** All documents recording or reflecting any OHA  
20 communication to any of the 16 CCOs in Oregon, written policies, documents, and/or data  
21 regarding CCO cost, utilization, and/or performance.  
22

23 **Response:**  
24  
25  
26

1 DATED: June 1, 2017

**PERKINS COIE LLP**

2  
3 By: /s/ Meredith M. Price

4 Stephen F. English, OSB No. 730843  
SEnglish@perkinscoie.com  
5 Thomas R. Johnson, OSB No. 010645  
TRJohnson@perkinscoie.com  
6 Meredith M. Price, OSB No. 134627  
MPrice@perkinscoie.com  
7 1120 N.W. Couch Street, 10th Floor  
Portland, OR 97209-4128  
Telephone: 503.727.2000  
8 Facsimile: 503.727.2222

9 Attorneys for Plaintiff FamilyCare, Inc.

10 *Of Counsel (admitted via pro hac vice)*

11 Melanie K. Curtice WSB No. 28479  
MCurtice@perkinscoie.com  
12 Matthew P. Gordon, WSB No. 41128  
MGordon@perkinscoie.com  
13 Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
14 Seattle, WA 98101  
Telephone: 1.206.359.8000  
15 Facsimile: 1.206.359.9000

16 Attorneys for Plaintiff FamilyCare, Inc.

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies under penalty of perjury under the laws of the State of  
3 Oregon that, on June 1, 2017, he caused to be served on the person(s) listed below in the manner  
4 shown:

5 **PLAINTIFF FAMILYCARE INC.'S FIRST SET OF REQUESTS FOR PRODUCTION  
6 OF DOCUMENTS TO OREGON HEALTH AUTHORITY**

7 Oregon Health Authority  
8 c/o Renee Stineman  
9 Department of Justice, Special Litigation Unit  
10 100 SW Market St.  
11 Portland, OR 97201

*Attorneys for Oregon Health Authority*

- 11  United States Mail, First Class  
12  By Messenger  
13  By E-Mail  
14  By regular e-mail and/or court's electronic service if parties are enrolled

15 Dated at Portland, Oregon, on June 1, 2017.

17 */s Meredith M. Price*  
18 Meredith M. Price

19  
20  
21  
22  
23  
24  
25  
26  
CERTIFICATE OF SERVICE

**Perkins Coie LLP**  
1120 N.W. Couch Street, 10th Floor  
Portland, OR 97209-4128  
Phone: 503.727.2000  
Fax: 503.727.2222

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

FAMILYCARE, INC., an Oregon non-profit corporation,

Plaintiff,

v.

OREGON HEALTH AUTHORITY, an agency of the State of Oregon,

Defendant.

Case No. 17CV09226  
Honorable Sean E. Armstrong

DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

**ORS 20.140 - State fees deferred at filing**

**GENERAL OBJECTIONS**

Defendant Oregon Health Authority (hereafter "OHA" or "Defendant") objects to plaintiff's requests for production of documents to the extent they seek documents or information protected by the attorney-client privilege, work product doctrine, or other applicable privileges or protections.

OHA further objects to the extent plaintiff's requests seek voluminous, duplicative and marginally relevant information that would be unduly burdensome and costly to collect, process, review and produce.

OHA also objects to the extent the requests seek electronically stored information that is not reasonably accessible.

OHA objects to plaintiff's definitions and instructions to the extent they are not authorized by ORCP and/or exceed the scope of discovery allowed by ORCP, and to the extent that they impose obligations on OHA beyond those permitted by ORCP. Specifically, OHA

1 objects to Instructions J and K. OHA will produce in the standard image and load file format  
2 used by the Department of Justice for processed electronic and hard copy documents, including  
3 relevant, non-privileged metadata. The parties will confer as necessary to resolve questions  
4 regarding form or production, including file-type specific formats.

5 OHA will only produce documents in its possession, custody, or control. OHA will only  
6 produce responsive information that can be identified using reasonable means of search and is  
7 prepared to confer regarding search terms and the scope and form of production.

8 Any production of documents by OHA is made without waiving or intending to waive (1)  
9 the above objections; (2) the right to object on the grounds of competency, privilege, relevancy,  
10 or materiality, or on any other ground, to the use of such information, for any purpose in whole  
11 or in part, in any subsequent step or proceeding in this action or in any other action; and (3) the  
12 right to object on any and all grounds, at any time, to any other discovery procedure involving or  
13 relating to the subject matter of this request, and to secure an appropriate protective order when  
14 necessary to protect confidential and/or employment information of state employees.

15 The following responses to plaintiff's request for production are subject to the above  
16 general objections.

## 17 **RESPONSES**

18 **REQUEST FOR PRODUCTION NO. 1:** All documents submitted by OHA or its actuarial  
19 consultants (including, but not limited to, Optumas) to CMS relating to the Rate Development  
20 Standards for each CCO and the trend models for each CCO in connection with the 2017  
21 Capitation Rates.

22 **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
23 or other proprietary information of a third party. Further, this request this request also seeks  
24 documents that are not relevant or likely to lead to the discovery of admissible evidence and is  
25

26

1 vague and/or overbroad in terms of the use of the words “in connection with.” Subject to this  
2 objection and the general objections stated above, responsive documents will be produced.

3 **REQUEST FOR PRODUCTION NO. 2:** All communications and worksheets, workbooks,  
4 spreadsheets, models, and documents that OHA or its actuarial consultants (including, but not  
5 limited to, Optumas) used or considered when evaluating or determining the Actuarial  
6 Soundness of the 2017 Capitation Rates.

7 **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
8 or other proprietary information of a third party and seeks documents or information that is not  
9 within the possession, custody or control of OHA. Subject to this objection and the general  
10 objections stated above, responsive documents will be produced.

11 **REQUEST FOR PRODUCTION NO. 3:** All communications related to and data used or  
12 considered by OHA or its actuarial consultants (including, but not limited to, Optumas) in  
13 connection with the 2017 Capitation Rates.

14 **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
15 or other proprietary information of a third party and seeks documents or information that is not  
16 within the possession, custody or control of OHA. Further, this request seeks documents that are  
17 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
18 overbroad in terms of the use of the words “or considered” and “in connection with.” Subject to  
19 this objection and the general objections stated above, responsive documents will be produced.

20 **REQUEST FOR PRODUCTION NO. 4:** All communications related to, and reports,  
21 memoranda, models, and documents prepared by, OHA’s actuarial consultants (including, but  
22 not limited to, Optumas) in connection with the 2017 Capitation Rates.

23 **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
24 or other proprietary information of a third party and seeks documents or information that is not  
25 within the possession, custody or control of OHA. Further, this request seeks documents that are

26

1 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
2 overbroad in terms of the use of the words “or considered” and “in connection with.” Subject to  
3 this objection and the general objections stated above, responsive documents will be produced.  
4 **REQUEST FOR PRODUCTION NO. 5:** All documents and data supporting the Regional  
5 Rate Model for the region in which FamilyCare operates.

6 **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
7 or other proprietary information of a third party and seeks documents or information that is not  
8 within the possession, custody or control of OHA. Further, this request seeks documents that are  
9 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
10 overbroad in terms of the lack of a date range encompassed and the use of the word  
11 “supporting.” Subject to this objection and the general objections stated above, responsive  
12 documents from May 22, 2016 (effective date of Settlement Agreement), to present, will be  
13 produced.

14 **REQUEST FOR PRODUCTION NO. 6:** All documents reflecting or relating to OHA’s  
15 policy decisions that affected the development of the 2017 Capitation Rates, including, but not  
16 limited to, policy decisions pertaining to lowering rates based on a CCO’s payments to primary  
17 care providers or any decisions pertaining to the 2017 Base Data Policy.

18 **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
19 or other proprietary information of a third party. Subject to this objection and the general  
20 objections stated above, responsive documents will be produced.

21 **REQUEST FOR PRODUCTION NO. 7:** To the extent documents are not provided in  
22 response to the foregoing requests, all communications or documents related to the calculation of  
23 Base Data Adjustments, including any consideration of a CCO’s past or current profitability,  
24 analysis of CCO financial statements, and consideration of reported expenditures, in connection  
25 with the 2017 Capitation Rates.

26

1           **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
2 or other proprietary information of a third party and seeks documents or information that is not  
3 within the possession, custody or control of OHA. Further, this request seeks documents that are  
4 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
5 overbroad in terms of the use of the words “any consideration of” and “in connection with.”  
6 Subject to this objection and the general objections stated above, responsive documents will be  
7 produced.

8           **REQUEST FOR PRODUCTION NO. 8:** All documents recording or reflecting any written or  
9 verbal communication between OHA and Health Share regarding capitation rates from  
10 January 1, 2013, to present.

11           **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
12 or other proprietary information of a third party. Further, this request seeks documents that are  
13 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
14 overbroad in terms of the date range encompassed and the use of the words “any . . .  
15 communication . . . regarding capitation rates.” Subject to this objection and the general  
16 objections stated above, responsive documents from May 22, 2016, to present, will be produced.

17           **REQUEST FOR PRODUCTION NO. 9:** All documents recording or reflecting any written or  
18 verbal communication between OHA and CareOregon regarding capitation rates from January 1,  
19 2013, to present.

20           **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
21 or other proprietary information of a third party. Further, this request seeks documents that are  
22 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
23 overbroad in terms of the date range encompassed and the use of the words “any . . .  
24 communication . . . regarding capitation rates.” Subject to this objection and the general  
25 objections stated above, responsive documents from May 22, 2016, to present, will be produced.



1 **REQUEST FOR PRODUCTION NO. 10:** To the extent documents are not provided in  
2 response to the foregoing requests, all documents recording or reflecting any written or verbal  
3 communication between OHA and Jeremy Vandehey regarding capitation rates from 2015 to  
4 present.

5 **RESPONSE:** Objection, this request seeks documents that are not relevant or likely to  
6 lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the date  
7 range encompassed and the use of the words “any . . . communication . . . regarding capitation  
8 rates.” Subject to this objection and the general objections stated above, responsive documents  
9 from May 22, 2016, to present, will be produced.

10 **REQUEST FOR PRODUCTION NO. 11:** To the extent documents are not provided in  
11 response to the foregoing requests, all documents recording or reflecting any written or verbal  
12 communication between OHA and any leadership or staff employee at Health Management  
13 Associates regarding capitation rates from 2015 to present.

14 **RESPONSE:** Objection, this request seeks documents that are not relevant or likely to  
15 lead to the discovery of admissible evidence. Further, this request seeks documents that are not  
16 relevant or likely to lead to the discovery of admissible evidence and is vague and/or overbroad  
17 in terms of the date range encompassed and the use of the words “any . . . communication . . .  
18 regarding capitation rates.” Subject to this objection and the general objections stated above,  
19 responsive documents from May 22, 2016, to present, will be produced.

20 **REQUEST FOR PRODUCTION NO. 12:** All versions of any document reflecting the  
21 Regional Rate Model for each of the four rating regions within Oregon for the calendar years  
22 2015, 2016, and 2017.

23 **RESPONSE:** Objection, this request seeks documents that are not within the possession,  
24 custody, or control of OHA. This request also seeks documents that are not relevant or likely to  
25 lead to the discovery of admissible evidence. Further, this request is vague and/or overbroad in  
26

1 terms of the date range encompassed and the use of the words “any version of any document.”  
2 Subject to this objection and the general objections stated above, responsive documents from  
3 May 22, 2016, to present, will be produced.

4 **REQUEST FOR PRODUCTION NO. 13:** Any documents relating to, reflecting, or  
5 containing the Base Data for each of the 16 CCOs in Oregon.

6 **RESPONSE:** Objection, this request seeks documents that are not within the possession,  
7 custody, or control of OHA. Further, this request seeks documents that are not relevant or likely  
8 to lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the  
9 lack of date range encompassed and the use of the words “Any documents relating to, reflecting,  
10 or containing . . . .” Subject to this objection and the general objections stated above, responsive  
11 documents from May 22, 2016, to present, will be produced.

12 **REQUEST FOR PRODUCTION NO. 14:** Any documents relating to, reflecting, or  
13 containing the regional base data and risk factors and/or raw risk score data for each of the four  
14 rating regions within Oregon.

15 **RESPONSE:** Objection, this request seeks documents that are not within the possession,  
16 custody, or control of OHA. This request seeks documents that are not relevant or likely to lead  
17 to the discovery of admissible evidence and is vague and/or overbroad in terms of the lack of  
18 date range encompassed and the use of the words “Any documents relating to, reflecting, or  
19 containing . . . .” Subject to this objection and the general objections stated above, responsive  
20 documents from May 22, 2016, to present, will be produced.

21 **REQUEST FOR PRODUCTION NO. 15:** All documents recording or reflecting any  
22 communication, written policies, documents, and data regarding any adjustments made by or at  
23 the direction of OHA or by Optumas to FamilyCare’s reported costs for the calendar years 2015,  
24 2016, and 2017.

25

26

1           **RESPONSE:** Objection, this request seeks documents that are not within the possession,  
2 custody, or control of OHA. This request seeks documents that are not relevant or likely to lead  
3 to the discovery of admissible evidence and is vague and/or overbroad in terms of the lack of  
4 date range encompassed. Subject to the general objections stated above, responsive documents  
5 from May 22, 2016, to present, will be produced.

6           **REQUEST FOR PRODUCTION NO. 16:** All documents recording or reflecting any written  
7 or verbal communications regarding FamilyCare between: Lynne Saxton, Rhonda Busek, David  
8 Rohrer, Dennis Tang, and/or Jeremy Vandehey, Lori Coyner, Leslie Clement, amongst  
9 themselves individually or collectively, or with or including any other person.

10           **RESPONSE:** Objection, this request also seeks documents that are not relevant or likely  
11 to lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the  
12 lack of date range encompassed and its inclusion of individuals no longer employed by the State  
13 of Oregon. Subject to the general objections stated above, documents from May 22, 2016, to  
14 present, regarding the basis for FamilyCare's 2017 capitation rates will be produced.

15           **REQUEST FOR PRODUCTION NO. 17:** All documents recording or reflecting any  
16 communication between OHA and Optumas regarding the 2015, 2016, and 2017 capitation rates.

17           **RESPONSE:** Objection, this request also seeks documents that are not relevant or likely  
18 to lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the  
19 lack of date range encompassed. Subject to the general objections stated above, documents from  
20 May 22, 2016, to present, regarding the 2017 capitation rates will be produced.

21           **REQUEST FOR PRODUCTION NO. 18:** All documents recording or reflecting any  
22 communication between OHA and CMS regarding the 2015, 2016, and 2017 capitation rates.

23           **RESPONSE:** Objection, this request also seeks documents that are not relevant or likely  
24 to lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the  
25

26

1 lack of date range encompassed. Subject to the general objections stated above, documents from  
2 May 22, 2016, to present, regarding the 2017 capitation rates will be produced.

3 **REQUEST FOR PRODUCTION NO. 19:** All documents provided to OHA by each and every  
4 CCO in Oregon that relate to each and every CCO's income, expenses, and profitability,  
5 including, but not limited to, the income, expenses, and profitability of each and every CCO's  
6 related entities.

7 **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
8 or other proprietary information of a third party. Further, this request seeks documents that are  
9 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
10 overbroad in terms of the lack of date range encompassed. Subject to the general objections  
11 stated above, documents from May 22, 2016, to present, regarding the 2017 capitation rates will  
12 be produced.

13 **REQUEST FOR PRODUCTION NO. 20:** All documents recording or reflecting  
14 communications between OHA and Optumas regarding the 2017 Actuarial Certification, the  
15 information contained therein, or the information on which the 2017 Rate Certification was  
16 based.

17 **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
18 or other proprietary information of a third party. Further, this request seeks documents that are  
19 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
20 overbroad in terms of the lack of date range encompassed. Subject to the general objections  
21 stated above, documents from May 22, 2016, to present will be produced.

22 **REQUEST FOR PRODUCTION NO. 21:** All documents recording or reflecting internal  
23 communications related to the 2017 Actuarial Certification, the information contained therein, or  
24 the information on which it was based.

25

26

1           **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
2 or other proprietary information of a third party. Further, this request seeks documents that are  
3 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
4 overbroad in terms of the lack of date range encompassed. Subject to the general objections  
5 stated above, documents from May 22, 2016, to present will be produced.

6 **REQUEST FOR PRODUCTION NO. 22:** All drafts of the 2017 Actuarial Certification.

7           **RESPONSE:** Objection, this request seeks documents that are not within the possession,  
8 custody, or control of OHA. Further, this request seeks documents that are not relevant or likely  
9 to lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the  
10 lack of a date range encompassed and the use of the words “All drafts.” Subject to this objection  
11 and the general objections stated above, responsive documents from May 22, 2016, to present,  
12 will be produced.

13 **REQUEST FOR PRODUCTION NO. 23:** All drafts of the 2017 Reimbursement Review.

14           **RESPONSE:** Objection, this request seeks documents that are not within the possession,  
15 custody, or control of OHA. Further, this request seeks documents that are not relevant or likely  
16 to lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the  
17 lack of a date range encompassed and the use of the words “All drafts.” Subject to this objection  
18 and the general objections stated above, responsive documents from May 22, 2016, to present,  
19 will be produced.

20 **REQUEST FOR PRODUCTION NO. 24:** All documents recording or reflecting  
21 communications within OHA related to the 2017 Reimbursement Review, its implementation,  
22 the policy decisions reflected therein, or the information on which it was based.

23           **RESPONSE:** Objection, this request seeks documents that are not relevant or likely to  
24 lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the lack  
25

26

1 of a date range encompassed. Subject to this objection and the general objections stated above,  
2 responsive documents from May 22, 2016, to present, will be produced.

3 **REQUEST FOR PRODUCTION NO. 25:** All documents recording or reflecting  
4 communications involving OHA related to the 2017 Reimbursement Review, its implementation,  
5 the policy decisions reflected therein, or the information on which it was based.

6 **RESPONSE:** Objection, this request seeks documents that are not relevant or likely to  
7 lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the lack  
8 of a date range encompassed and the use of the words “communications involving OHA.”  
9 Subject to this objection and the general objections stated above, responsive documents from  
10 May 22, 2016, to present, will be produced.

11 **REQUEST FOR PRODUCTION NO. 26:** All documents recording or reflecting  
12 communications between OHA and Optumas related to the 2017 Capitation Rates, including but  
13 not limited to the development of those rates.

14 **RESPONSE:** Objection, this request seeks documents that are not relevant or likely to  
15 lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the lack  
16 of a date range encompassed. Subject to this objection and the general objections stated above,  
17 responsive documents from May 22, 2016, to present, will be produced.

18 **REQUEST FOR PRODUCTION NO. 27:** All documents recording or reflecting internal  
19 communications related to the 2017 Capitation Rates, including but not limited to the  
20 development of those rates.

21 **RESPONSE:** Objection, this request seeks documents that are not relevant or likely to  
22 lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the lack  
23 of a date range encompassed. Subject to this objection and the general objections stated above,  
24 responsive documents from May 22, 2016, to present, will be produced.

25

26

1 **REQUEST FOR PRODUCTION NO. 28:** All documents recording or reflecting  
2 communications involving OHA related to the 2017 Capitation Rates, including but not limited  
3 to the development of those rates.

4 **RESPONSE:** Objection, this request seeks documents that are not relevant or likely to  
5 lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the lack  
6 of a date range encompassed and the use of the words “communications involving OHA.”  
7 Subject to this objection and the general objections stated above, responsive documents from  
8 May 22, 2016, to present, will be produced.

9 **REQUEST FOR PRODUCTION NO. 29:** All documents recording or reflecting any  
10 communication, written policies, documents, and/or data involving the Settlement Agreement,  
11 effective as of May 22, 2106, entered into between OHA and FamilyCare.

12 **RESPONSE:** Objection, this request seeks documents that are not within the possession,  
13 custody, or control of OHA. Further, this request seeks documents that are not relevant or likely  
14 to lead to the discovery of admissible evidence and is vague and/or overbroad in terms of the use  
15 of the words “involving the Settlement Agreement.” Subject to this objection and the general  
16 objections stated above will be produced.

17 **REQUEST FOR PRODUCTION NO. 30:** All documents recording or reflecting any  
18 communication, written policies, documents, and/or data communicating CCO cost, utilization  
19 and/or performance related to the Quality and Health Outcomes Committee of the Office of  
20 Clinical Services Improvement.

21 **RESPONSE:** Objection, this request seeks documents that are not within the possession,  
22 custody, or control of OHA. Further, this request seeks documents that are not relevant or likely  
23 to lead to the discovery of admissible evidence and is vague and/or overbroad in terms of lack of  
24 date range encompassed and the use of the words “related to the Quality and Health Outcomes  
25 Committee of the Office of Clinical Services Improvement.” Subject to this objection and the

26

1 general objections stated above, responsive documents from May 22, 2016, to present, will be  
2 produced.

3 **REQUEST FOR PRODUCTION NO. 31:** All documents recording or reflecting any OHA  
4 communication to any of the 16 CCOs in Oregon, written policies, documents, and/or data  
5 regarding CCO cost, utilization, and/or performance.

6 **RESPONSE:** Objection, this request seeks documents or information that is trade secret  
7 or other proprietary information of a third party. Further, this request seeks documents that are  
8 not relevant or likely to lead to the discovery of admissible evidence and is vague and/or  
9 overbroad in terms of the lack of a date range encompassed. Subject to the general objections  
10 stated above, documents from May 22, 2016, to present will be produced.

11 DATED July 05, 2017.

12 Respectfully submitted,

13 ELLEN F. ROSENBLUM  
14 Attorney General

15 *s/ Renee Stineman*

16 RENEE STINEMAN #994610  
17 Attorney-in-Charge  
18 CARLA A. SCOTT #054725  
19 Senior Assistant Attorney General  
20 ELLEANOR H. CHIN #061484  
21 Senior Assistant Attorney General  
22 Trial Attorneys  
23 Tel (971) 673-1880/Fax (971) 673-5000  
24 Renee.Stineman@doj.state.or.us  
25 Carla.A.Scott@doj.state.or.us  
26 Elleanor.Chin@doj.state.or.us  
Of Attorneys for Plaintiff



1 **CERTIFICATE OF SERVICE**

2 I certify that on July 05, 2017, I served the foregoing DEFENDANT'S RESPONSE TO  
3 PLAINTIFF'S FIRST REQUEST FOR PRODUCTION upon the parties hereto by the method  
4 indicated below, and addressed to the following:

5 Stephen F. English  
6 Courtney Rian Peck  
7 Meredith M. Price  
8 Thomas Russell Johnson  
9 Perkins Coie LLP  
10 1120 NW Couch 10th Flr  
11 Portland, OR 97209  
12 *Of Attorneys for Plaintiff*

HAND DELIVERY  
 MAIL DELIVERY  
 OVERNIGHT MAIL  
 SERVED BY E-FILING

11 *s/ Renee Stineman*  
12 RENEE STINEMAN #994610  
13 Attorney-in-Charge  
14 CARLA A. SCOTT #054725  
15 Senior Assistant Attorney General  
16 ELLEANOR H. CHIN #061484  
17 Senior Assistant Attorney General  
18 Trial Attorneys  
19 Tel (971) 673-1880/Fax (971) 673-5000  
20 Renee.Stineman@doj.state.or.us  
21 Carla.A.Scott@doj.state.or.us  
22 Elleanor.Chin@doj.state.or.us  
23 Of Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

FAMILYCARE, INC., an Oregon non-profit corporation,

Plaintiff,

v.

OREGON HEALTH AUTHORITY, an agency of the State of Oregon,

Defendant.

Case No. 17CV09226  
Honorable Sean E. Armstrong

STIPULATED PROTECTIVE ORDER

**ORS 20.140 - State fees deferred at filing**

This action concerns information that may be considered confidential, trade secret, proprietary, or commercially-sensitive information of the parties and third-parties (collectively, “confidential information”) and, in the course of this litigation, the parties expect to exchange and obtain from third-parties confidential information and documents referencing or containing confidential information (collectively, “confidential materials”). The parties agree that the entry of this Stipulated Protective Order (“Protective Order”) is warranted to limit disclosure of any such documents and information.

1. All documents, testimony, and other materials produced by the parties in this case and labeled “Confidential” or “Attorneys’ Eyes Only” and subject to this Protective Order shall be used only in this proceeding.

2. Use of any information or documents labeled “Confidential” or “Attorneys’ Eyes Only” and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any business, commercial, or competitive purpose.

1           3.       This Protective Order does not restrict the disclosure or use of any information or  
2 documents lawfully obtained by the receiving party from any source other than the party  
3 claiming confidentiality or through means or sources outside of this litigation. Should a dispute  
4 arise as to any specific information or document, the burden shall be on the party claiming that  
5 such information or document was lawfully obtained through means and sources outside of this  
6 litigation.

7           4.       Producing parties, including third parties, may designate as “Confidential” or  
8 “Attorneys’ Eyes Only” documents, testimony, written responses, or other materials produced in  
9 this case if they contain information that the producing party has a good faith basis for asserting  
10 is confidential under the applicable legal standards. As used herein, “designating party” shall  
11 refer to the party or third party designating any document, testimony or other materials as  
12 “Confidential” or “Attorneys’ Eyes Only” under this Protective Order. The designating party  
13 shall designate each page of the document with a stamp identifying it as “Confidential” or  
14 “Attorneys’ Eyes Only,” unless impractical to do so.

15           5.       If portions of documents or other materials deemed “Confidential” or “Attorneys’  
16 Eyes Only” or any papers containing or making reference to such materials are filed with the  
17 Court, the party seeking to file the confidential materials shall first move the court pursuant to  
18 UTCR 5.160. Upon approval by the court the party shall file the confidential materials under  
19 seal, marked as follows or in substantially similar form:

20                   CONFIDENTIAL - IN ACCORDANCE WITH A PROTECTIVE ORDER, THE  
21                   ENCLOSURE(S) SHALL BE TREATED AS CONFIDENTIAL AND SHALL NOT BE  
22                   SHOWN TO ANY PERSON OTHER THAN THOSE PERSONS DESIGNATED IN  
23                   PARAGRAPH 8 OF THE PROTECTIVE ORDER.

23           *or*

24                   ATTORNEYS’ EYES ONLY - IN ACCORDANCE WITH A PROTECTIVE ORDER,  
25                   THE ENCLOSURE(S) SHALL BE TREATED AS FOR ATTORNEYS’ EYES ONLY  
26                   AND SHALL NOT BE SHOWN TO ANY PERSON OTHER THAN THOSE  
27                   PERSONS DESIGNATED IN PARAGRAPH 9 OF THE PROTECTIVE ORDER.

1           6.       Within thirty (30) calendar days after receipt of the final transcript of the  
2 deposition of any party or witness in this case, a party or the witness may designate as  
3 “Confidential” or Attorneys’ Eyes Only” any portion of the transcript that the party or witness  
4 contends discloses confidential information. If a transcript containing any such material is filed  
5 with the Court, it shall be filed under seal and marked in the manner described in paragraph 5.  
6 Unless otherwise agreed, all deposition transcripts shall be treated as “Confidential” until the  
7 expiration of the thirty-day period.

8           7.       “Confidential” or “Attorneys’ Eyes Only” information and documents subject to  
9 this Protective Order shall not be filed with the Court or included in whole or in part in  
10 pleadings, motions, briefs, etc., filed in this case, except when any portion(s) of such pleadings,  
11 motions, briefs, etc. have been filed under seal by counsel and marked in the same manner as  
12 described in paragraph 5 above. Such sealed portion(s) of pleadings, motions, briefs, documents,  
13 etc., shall be opened only by the Court or by personnel authorized to do so by the Court.

14           8.       Use of any information, documents, or portions of documents marked  
15 “Confidential,” including all information derived therefrom, shall be restricted solely to the  
16 following persons, who agree to be bound by the terms of this Protective Order, unless additional  
17 persons are stipulated by counsel or authorized by the Court:

18               a.       Outside counsel of record for the parties, and the administrative staff of  
19 outside counsel’s firms.

20               b.       In-house counsel for the parties, and the administrative staff for each in-  
21 house counsel.

22               c.       Any party to this action and any employee, director, officer, or manager of  
23 any party, as such party’s counsel may deem reasonable for purposes of this litigation.

24               d.       Independent consultants or expert witnesses (including partners, associates  
25 and employees of the firm which employs such consultant or expert) retained by a party or its  
26

1 attorneys for purposes of this litigation, as such party's counsel may deem reasonable for  
2 purposes of this litigation.

3 e. The Court and its personnel, including, but not limited to, stenographic  
4 reporters regularly employed by the Court and stenographic reporters not regularly employed by  
5 the Court who are engaged by the Court or the parties during the litigation of this action,

6 f. The authors and the original recipients of the documents.

7 g. Any court reporter or videographer reporting a deposition.

8 h. Employees of copy services, microfilming or database services, trial  
9 support firms and/or translators who are engaged by the parties during the litigation of this  
10 action.

11 9. Use of any information, documents, or portions of documents marked "Attorneys'  
12 Eyes Only," including all information derived therefrom, shall be restricted solely to the persons  
13 listed in paragraphs 8(a), 8(b), 8(d), 8(e), 8(f), 8(g) and 8(h), unless additional persons are  
14 stipulated by counsel or authorized by the Court. Prior to being shown any documents produced  
15 by another party marked "Confidential" or "Attorneys' Eyes Only," any person listed under  
16 paragraph 8(c) or 8(d) shall agree to be bound by the terms of this Order by signing the  
17 agreement attached as Exhibit A.

18 10. Whenever information designated as "Confidential" or "Attorneys' Eyes Only"  
19 pursuant to this Protective Order is to be discussed by a party or disclosed in a deposition,  
20 hearing, or pre-trial proceeding, the designating party may exclude from the room any person,  
21 other than persons designated in paragraphs 8 and 9, as appropriate, for that portion of the  
22 deposition, hearing or pre-trial proceeding.

23 11. Each party reserves the right to dispute the confidential status claimed by any  
24 other party or subpoenaed party in accordance with this Protective Order. If a party believes that  
25 any documents or materials have been inappropriately designated by another party or  
26 subpoenaed party, that party shall confer with counsel for the designating party. As part of that

1 conferral, the designating party must assess whether redaction is a viable alternative to complete  
2 non-disclosure. If the parties are unable to resolve the matter informally, a party may file an  
3 appropriate motion before the Court requesting that the Court determine whether the Protective  
4 Order covers the document in dispute. Regardless of which party files the motion, the party  
5 seeking to protect a document from disclosure bears the burden of establishing good cause for  
6 why the document should not be disclosed. A party who disagrees with another party's  
7 designation must nevertheless abide by that designation until the matter is resolved by agreement  
8 of the parties or by order of the Court.

9           12. The inadvertent failure to designate a document, testimony, or other material as  
10 "Confidential" or "Attorneys' Eyes Only" prior to disclosure shall not operate as a waiver of the  
11 party's right to later designate the document, testimony, or other material as "Confidential" or  
12 "Attorneys' Eyes Only." The receiving party or its counsel shall not disclose such documents or  
13 materials if that party or counsel knows or reasonably should know that a claim of confidentiality  
14 would be made by the producing party. Promptly after receiving notice from the producing party  
15 of a claim of confidentiality, the receiving party or its counsel shall inform the producing party  
16 of all pertinent facts relating to the prior disclosure of the newly-designated documents or  
17 materials, and shall make reasonable efforts to retrieve such documents and materials and to  
18 prevent further disclosure.

19           13. Designation by either party of information or documents as "Confidential" or  
20 "Attorneys' Eyes Only," or failure to so designate, will not be constitute an admission that  
21 information or documents are or are not confidential or trade secrets. Neither party may  
22 introduce into evidence in any proceeding between the parties, other than a motion to determine  
23 whether the Protective Order covers the information or documents in dispute, the fact that the  
24 other party designated or failed to designate information or documents as "Confidential" or  
25 "Attorneys' Eyes Only."

26

1           14.     A large volume of documents may be exchanged through discovery in this  
2 lawsuit, and the parties want to expedite the review and delivery of such documents. It is agreed  
3 that if either party discloses privileged information and/or protected trial preparation materials,  
4 the parties understand that there will be no waiver of privilege and/or protection. A party may  
5 assert the privilege and/or protection at any time in the litigation. After being notified of the  
6 privilege or protection, the other party (a) must promptly return the specified information, and  
7 any copies in its possession, custody, or control, (b) must make reasonable efforts to retrieve and  
8 to prevent disclosure of the information, if the party disclosed it before being notified, and  
9 (c) may not further use or disclose the information. A party opposing the claim of privilege  
10 and/or protection must promptly present the information to the court under seal for a  
11 determination of the claim. Absent an expressed intent to waive, the presumption will be in  
12 favor of privilege and/or protection.

13           15.     Upon the request of the producing party or third party, within 30 days after the  
14 entry of a final judgment no longer subject to appeal on the merits of this case, or the execution  
15 of any agreement between the parties to resolve amicably and settle this case, the parties and any  
16 person authorized by this Protective Order to receive confidential information shall return to the  
17 producing party or third party, or destroy, all information and documents subject to this  
18 Protective Order. Returned materials shall be delivered in sealed envelopes marked  
19 “Confidential” or “Attorneys’ Eyes Only” as appropriate to respective counsel. The party  
20 requesting the return of materials shall pay the reasonable costs of responding to its request.  
21 Notwithstanding the foregoing, counsel for a party may retain archival copies of all confidential  
22 documents.

23           16.     This Protective Order shall not constitute a waiver of any party’s or non-party’s  
24 right to oppose any discovery request or object to the admissibility of any document, testimony  
25 or other information.

26

1           17.    Nothing in this Protective Order shall prejudice any party from seeking  
2 amendments to expand or restrict the rights of access to and use of confidential information, or  
3 other modifications, subject to order by the Court.

4           18.    The restrictions on disclosure and use of confidential information shall survive the  
5 conclusion of this action and this Court shall retain jurisdiction of this action after its conclusion  
6 for the purpose of enforcing the terms of this Protective Order.

7   **IT IS SO STIPULATED.**

8

9

<p>10     <u>s/ Thomas R. Johnson</u> THOMAS R. JOHNSON #010645 Of Attorneys for Plaintiff</p>	<p>   <u>/s/ Renee R. Stineman</u> RENEE STINEMAN #994610 Of Attorneys for Defendant</p>
--------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------

11

12           The Court has reviewed the reasons offered in support of entry of this Stipulated  
13 Protective Order and finds that there is good cause to protect the confidentiality of the  
14 confidential materials, therefore, pursuant to ORCP 36, the Court adopts the above Stipulated  
15 Protective Order in this action.

16   **IT IS SO ORDERED.**

17

18

19

20

21   Submitted by: Renee Stineman  
                  Attorney-in-Charge  
                  Attorneys for Defendants

22

23

24

25

26



**EXHIBIT A**

I, \_\_\_\_\_, have been advised by counsel of record for  
\_\_\_\_\_ in *FamilyCare, Inc. v. Oregon Health Authority*,  
Case No. 17CV09226, Marion County, Oregon, of the protective order governing the delivery,  
publication, and disclosure of confidential documents and information produced in this litigation.  
I have read a copy of the protective order and agree to abide by its terms.

\_\_\_\_\_  
Signed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

1 **CERTIFICATE OF READINESS**

2 This proposed *order* is ready for judicial signature because:

3 1.  Each opposing party affected by this *order* has stipulated to the *order*, as shown  
4 by each opposing party's signature on the document being submitted.

5 2.  Each opposing party affected by this *order* has approved the *order*, as shown by  
6 signature on the document being submitted or by written confirmation of approval  
7 sent to me.

8 3.  I have served a copy of this *order* on all parties entitled to service and provided  
9 written notice of the objection period, and:

10 a.  No objection has been served on me within that time frame.

11 b.  I received objections that I could not resolve with the opposing party  
12 despite reasonable efforts to do so. I have filed with the court a copy of the  
13 objections I received and indicated which objections remain unresolved.

14 c.  After conferring about objections, [*role and name of opposing party*]  
15 agreed to file any remaining objection with the court by [*date*], which  
16 predated my submission.

17 4.  The relief sought is against an opposing party who has been found in default.

18 5.  An order of default is being requested with this proposed judgment.

19 6.  Service is not required by statute, rule, or otherwise.

20 DATED June 8, 2017.

21  
22  
23 s/ Renee Stineman  
24 RENEE STINEMAN #994610  
25 Attorney-in-Charge  
26 Trial Attorney  
Tel (971) 673-1880/Fax (971) 673-5000  
Renee.Stineman@doj.state.or.us  
Of Attorneys for Defendant



## Mullaney Colleen

---

**From:** efilmingmail@tylerhost.net  
**Sent:** Friday, June 9, 2017 8:49 AM  
**To:** Mullaney Colleen  
**Subject:** Filing Accepted for Case: 17CV09226; FamilyCare, Inc.vsOregon Health Authority;  
Envelope Number: 2170593

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Categories:** Holding



## Filing Accepted

Envelope Number: 2170593  
Case Number: 17CV09226  
Case Style: FamilyCare, Inc.vsOregon Health Authority

The filing below was reviewed and has been accepted by the clerk's office. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details	
<b>Court</b>	Judicial District 3
<b>Case Number</b>	17CV09226
<b>Case Style</b>	FamilyCare, Inc.vsOregon Health Authority
<b>Date/Time Submitted</b>	6/8/2017 1:07:28 PM PDT
<b>Date/Time Accepted</b>	6/9/2017 8:48:28 AM PDT
<b>Accepted Comments</b>	
<b>Filing Type</b>	Order - Proposed - PPOR
<b>Filing Description</b>	
<b>Activity Requested</b>	EFileAndServe
<b>Filed By</b>	Colleen Mullaney
<b>Filing Attorney</b>	Renee Stineman

Document Details	
<b>Lead Document</b>	FamilyCare 9226 Stipulated Protective Order.pdf
<b>Lead Document Page Count</b>	10
<b>File Stamped Copy</b>	<a href="#">Download Document</a>

This link is active for 45 days.

**Please Note:** If you have not already done so, be sure to add yourself as a service contact on this case in order to receive eService.

For technical assistance, contact your service provider

Odyssey File & Serve

(800) 297-5377

Please do not reply to this email. It was automatically generated.