# VIA E-MAIL

The Honorable Richard Devlin State Senator

State Capitol, S-211 900 Court St NE Salem, OR 97301

# Re: FamilyCare Rate Amendment

Dear Senator Devlin:

I represent FamilyCare, Inc. (“FamilyCare”).

In late summer, the Oregon Health Authority (“OHA”) proposed an amendment to the OHA- FamilyCare contract that would apply new, lower reimbursement rates retroactive to January 1, 2015. These retroactive rates would result in an overall reduction in OHA payments to FamilyCare of approximately $66.3 million for 2015, including a “claw back” of about $55 million already paid to FamilyCare by OHA.

After careful review and consideration, FamilyCare has determined that it will reject the August retroactive rate amendment. FamilyCare has asked me to write this letter to explain the legal basis for rejecting the amendment.

Oregon law requires that Coordinated Care Organization (“CCO”) rates be set prospectively, not retrospectively. ORS 414.025(6), 414.620(1). In addition, the OHA-FamilyCare contract requires OHA to provide FamilyCare with written notice at least 30 days before any rate amendments become effective. A retroactive rate amendment does not comply with either of these requirements.

Moreover, federal law requires that the payments made to each CCO must be actuarially sound. 42 USC § 1396b(m)(2)(A)(iii). Under the corrective action plan between OHA and the federal Centers for Medicare & Medicaid Services (“CMS”), OHA is required to develop actuarially sound rate ranges for each CCO, including FamilyCare. The revised 2015 rates have not been certified as actuarially sound for each CCO. The actuary only certified regional rate ranges. In

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fact, the certification report for the revised 2015 rates contains a disclaimer by OHA’s actuary stating that the revised 2015 rates may not be appropriate for any specific CCO. The prior OHA actuarial certification did not include this disclaimer.

Oregon law limits OHA to one amendment in a 12-month period *unless* (1) OHA and FamilyCare mutually agree; or (2) the amendment is necessitated by changes in law. We know of no change in law that has occurred necessitating the retroactive rate amendment, and OHA has not identified any such change. In papers filed with the Marion County Circuit Court, OHA has admitted:

* CMS did not reject the original 2015 rates
* OHA has not withdrawn the original 2015 rates from CMS review
* No law, rule, or regulation requires OHA to use a specific methodology to develop the August rates in order for OHA to qualify for federal reimbursement
* No law, rule, or regulation required or directed OHA to apply the August 2015 rates retroactive to January 1, 2015

It is my understanding that these admissions contradict OHA’s October testimony before a number of legislative panels. We are enclosing a copy of OHA’s admissions for your review.

Very truly yours,



Kelly Knivila

KK:ipc Attachment

cc: Jeff Heatherington