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

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

8 Plaintiff,

9 v.

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

11 Defendant.

Case No. 15CV13782
Honorable Cheryl A. Pellegrini

DEFENDANT'S RESPONSE TO PLAINTIFF'S
FIRST REQUEST FOR ADMISSIONS

ORS 20.140 - State fees deferred at filing

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13 Defendant Oregon Health Authority ("OHA") responds to Plaintiff's First Request for
14 Admissions as follows:

15 **GENERAL OBJECTIONS**

16 1. The State objects to the Requests to the extent that they seek to impose
17 obligations on the State beyond those authorized by the Oregon Rules of Civil Procedure.

18 2. The State objects to the Requests to the extent that they seek information
19 protected from disclosure by the attorney-client privilege, work-product doctrine, or any other
20 applicable privilege or immunity.

21 3. The State objects to the Requests to the extent that they seek legal conclusions or
22 opinions, or seek information that is the subject of expert discovery.

23 4. The State objects to the Requests to the extent that they seek information that is
24 not relevant to the subject matter in this action and not likely to lead to the discovery of
25 admissible evidence in this action.
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1 **RESPONSES TO REQUESTS FOR ADMISSION**

2 **REQUEST FOR ADMISSION NO. 1:** Admit that the U.S. Department of Health and Human
3 Services, Centers for Medicare and Medicaid Services (“CMS”) did not reject OHA’s 2015 rates
4 as originally set forth in the Health Plan Services Contract, Coordinated Care Organization,
5 Contract # 143114-4 (the “Contract”), between the State of Oregon, acting by and through OHA.

6 **RESPONSE:** Objection, this request is vague and ambiguous with respect to the words
7 “reject OHA’s 2015 rates.” Subject to the general objections stated above and the objection
8 stated herein, admit. OHA reserves the right to amend this response if additional facts are
9 learned or circumstances change.

10 **REQUEST FOR ADMISSION NO. 2:** Admit that OHA withdrew from CMS’s consideration
11 the 2015 rates as originally set forth in the Contract before CMS approved or rejected such rates.

12 **RESPONSE:** Objection, this request is vague and ambiguous with respect to the phrases
13 “withdrew from CMS’s consideration” and “before CMS approved or rejected such rates.”
14 Subject to the general objections stated above and the objection stated herein, deny. While OHA
15 has not withdrawn the referenced rates from CMS review, it is the understanding of OHA that
16 the referenced rates are not currently under review by CMS as the referenced rates are being
17 treated by CMS as superseded by subsequently submitted, redeveloped rates. OHA reserves the
18 right to amend this response if additional facts are learned or circumstances change.

19 **REQUEST FOR ADMISSION NO. 3:** Admit that no state or federal government law, rule or
20 regulation required or directed OHA to use the amended methodology OHA used to generate the
21 rates contained in Amendment No. 6 to the Contract (the “amended 2015 rates”), attached hereto
22 as Exhibit 1.

23 **RESPONSE:** Objection, this request is vague and ambiguous with respect to the words
24 “required or directed” and “to use” and “the amended methodology” and “to generate.” Further,
25 the request is compound and does not set out each matter to be admitted separately, as required
26 by ORCP 45A and the request seeks a response which is not relevant to matters within the scope

1 of discovery as provided for in ORCP 36. Subject to the general objections stated above and the
2 objection stated herein, admit only that neither state nor federal government law, nor rule, nor
3 regulation either required or directed OHA to use any specific methodology to generate the
4 referenced rates. Except as expressly admitted, deny the remainder of the request. OHA further
5 states that in order to qualify for federal fund reimbursement, OHA is required by law to (1) pay
6 entities, including FamilyCare, in accordance with a contract under which prepaid payments to
7 the entity are made on an actuarially sound basis, and (2) obtain approval from CMS for those
8 contracts. (42 USC 1396b(m)(2)(A)(iii)). While no specific methodology used to develop the
9 referenced rates is dictated or required to qualify for federal fund reimbursement, the
10 methodology employed by OHA in developing the referenced rates was employed to satisfy
11 these legal requirements to obtain federal funding. OHA reserves the right to amend this
12 response if additional facts are learned or circumstances change.

13 **REQUEST FOR ADMISSION NO. 4:** Admit that no state or federal government law, rule or
14 regulation required or directed OHA to apply the amended 2015 rates retroactively so that they
15 are effective January 1, 2015.

16 **RESPONSE:** Objection, this request is vague and ambiguous with respect to the words
17 “required or directed” and “to apply.” Further, the request is compound and does not set out
18 each matter to be admitted separately, as required by ORCP 45A and the request seeks a
19 response which is not relevant to matters within the scope of discovery as provided for in
20 ORCP 36. Subject to the general objections stated above and the objection stated herein, admit
21 only that neither state nor federal government law, nor rule, nor regulation either required or
22 directed OHA to apply the referenced rates retroactively to January 1, 2015. Except as expressly
23 admitted, deny the remainder of the request. OHA further states that in order to qualify for
24 federal fund reimbursement, OHA is required by law to (1) pay entities, including FamilyCare,
25 in accordance with a contract under which prepaid payments to the entity are made on an
26 actuarially sound basis, and (2) obtain approval from CMS for those contracts. (42 USC

1 1396b(m)(2)(A)(iii)). While retroactive application of the referenced rates was not expressly
2 required to obtain CMS approval of the 2015 contract and qualify for federal fund
3 reimbursement, based on information available to OHA at the time, retroactive application of the
4 referenced rates was deemed by OHA to be more likely to result in efficiently obtaining CMS
5 approval of the 2015 contract than alternative approaches considered, including, but not limited
6 to (1) disregarding FamilyCare and other CCO's objections to the original 2015 rates referenced
7 in Request for Admissions 1, and continuing to seek CMS approval of a 2015 contract
8 incorporating those original 2015 rates, or (2) seeking approval of a 2015 contract incorporating
9 the original 2015 rates referenced in Request for Admissions 1 to be applied for a portion of
10 2015 and incorporating the referenced amended 2015 rates to be applied for the remainder of
11 2015. OHA reserves the right to amend this response if additional facts are learned or
12 circumstances change.

13 DATED October 12, 2015.

14 Respectfully submitted,

15 ELLEN F. ROSENBLUM
16 Attorney General

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Of Attorneys for Defendant OHA

1 **CERTIFICATE OF SERVICE**

2 I certify that on October 12, 2015, I served the foregoing DEFENDANT'S RESPONSE
3 TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS upon the parties hereto by the method
4 indicated below, and addressed to the following:

5 Jeremy D. Sacks
6 Reilley D. Keating
7 Stoel Rives LLP
8 900 SW 5th Avenue, Suite 2600
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Of Attorneys for Plaintiff

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13 s/ Renee Stineman
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