

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE
COOPERATIVE,

Plaintiff,
on behalf of itself and all others
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. 1:17-cv-00877-KCD
(Judge Davis)

**UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT WITH DEFENDANT AND TO
DIRECT NOTICE TO THE SETTLEMENT CLASS**

TABLE OF CONTENTS

	<u>Page</u>
I. PRELIMINARY STATEMENT	1
II. BACKGROUND	2
1. Procedural History	2
2. Settlement Negotiations	5
3. The Settlement Consideration and Release of Claims	7
4. Notice and Implementation of the Settlement	8
III. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT	9
1. Legal Standard Governing Approval of Class Action Settlements	9
2. The Court “Will Likely Be Able” to Approve the Proposed Settlement Under Rule 23(e)(2).....	11
1. The Proposed Settlement is Procedurally Fair.	12
2. The Proposed Settlement Provides Thorough Relief to the Class.	14
(a) Settlement provides more relief than trial.	14
(b) The Settlement will be effectively distributed.	16
(c) The proposed award of attorney’s fees is fair.	16
(d) The Parties presently have no other relevant settlement agreements.....	17
3. The Proposed Settlement Treats Class Members Equitably.....	17
IV. THE SETTLEMENT CLASSES ARE CERTIFIABLE	17
V. NOTICE TO THE CLASSES SHOULD BE APPROVED	18
VI. PROPOSED SCHEDULE OF SETTLEMENT-RELATED EVENTS	19
VII. CONCLUSION	21

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<i>Barlow v. United States</i> , 145 Fed. Cl. 228 (2019)	14
<i>Berkley v. United States</i> , 59 Fed. Cl. 675 (2004)	9
<i>City of Providence v. Aeropostale, Inc.</i> , 2014 WL 1883494 (S.D.N.Y. May 9, 2014), <i>aff'd sub nom. Arbuthnot v. Pierson</i> , 607 F. App'x 73 (2d Cir. 2015)	12
<i>Common Ground Healthcare Cooperative v. United States</i> (U.S. Feb. 24, 2021) (No. 20-1200)	5
<i>Community Health Choice, Inc. v. United States</i> , 970 F.3d 1364 (Fed. Cir. 2020)	4, 5, 13, 14, 15, 17
<i>Courval v. United States</i> , 140 Fed. Cl. 133 (2018)	12
<i>Dauphin Island Prop. Owners Ass'n v. United States</i> , 90 Fed. Cl. 95 (2009)	9, 13
<i>In re Fed. Nat'l Mortg. Assoc. Secs., Derivative, & "ERISA" Litig.</i> , 4 F. Supp. 3d 94 (D.D.C. 2013)	12, 13
<i>Furlong v. United States</i> , 131 Fed. Cl. 548 (2017)	9
<i>In re Graña y Montero S.A.A. Sec. Litig.</i> , 2021 WL 4173684 (E.D.N.Y. Aug. 13, 2012)	14
<i>Lambert v. United States</i> , 124 Fed. Cl. 675 (2015)	10
<i>Maine Community Health Options v. United States</i> (No. 20-1162)	5
<i>Mercier v. United States</i> , 156 Fed. Cl. 580 (2021)	16
<i>Mullane v. Cent. Hanover Bank & Tr. Co.</i> , 339 U.S. 306 (1950)	18

<i>Nat'l Treasury Emps. Union v. United States</i> , 54 Fed. Cl. 791 (2002)	14
<i>Quimby v. United States</i> , 107 Fed. Cl. 126 (2012)	12
<i>Raulerson v. United States</i> , 108 Fed. Cl. 675 (2013)	11
<i>Sabo v. United States</i> , 102 Fed. Cl. 619 (2011)	9
<i>Sanford Health Plan v. United States</i> , 969 F.3d 1370 (Fed. Cir. 2020)	4
<i>In re Telik, Inc. Sec. Litig.</i> , 576 F. Supp. 2d 570 (S.D.N.Y. 2008)	17
<i>In re TFL-LCD (Flat Panel) Antitrust Litig.</i> , 2011 WL 7575004 (N.D. Cal. Dec. 27, 2011)	17
<i>In re Vitamins Antitrust Litig.</i> , 2000 WL 1737867 (D.D.C. Mar. 31, 2000)	17

Rules/Statutes

28 U.S.C. § 1491(a)(1)	4
42 U.S.C. § 18062	3
42 U.S.C. § 18071	2
42 U.S.C. § 18082	3
ACA § 1342	3
ACA § 1402	2
ACA § 1402, Pub. L. No. 111-148 (2010), 124 Stat. 119	3, 4, 12
Fed. R. Civ. P. 23	9
United States Code Title 26	7

Other Authorities

4 William B. Rubenstein, Newberg on Class Actions § 13:13 (6th ed. 2023)	10
Manual for Complex Litigation (Fourth) § 13.14 (2020).....	9
RCFC 23.....	<i>passim</i>

Plaintiff Common Ground Healthcare Cooperative (“Common Ground” or “Plaintiff”) and the Settlement Classes (defined below) respectfully submit this unopposed Motion, pursuant to Rule 23 of the Rules of the United States Court of Federal Claims (“RCFC” or “Rules”), for an order:

- (1) preliminarily approving the Proposed Settlement Agreement with Defendant for the Settlement Classes, attached hereto as Exhibit 1 (“Settlement”);
- (2) directing notice to the proposed Settlement Classes in connection with the class action settlement, and approving the proposed forms and manner of notice;
- (3) authorizing retention of JND Legal Administration as Settlement Administrator; and
- (4) scheduling a hearing to determine whether the proposed settlement is fair, reasonable, and adequate under RCFC 23(e).

I. PRELIMINARY STATEMENT

After five years of vigorous litigation and three additional years of thorough settlement negotiations, the parties have resolved the certified 2017 CSR Subclass, 2018 CSR Subclass, and 2019 CSR Subclass’s (collectively, the “Settlement Classes”) claims against the United States of America (“Government” or “Defendant”) for a cash payment pursuant to the terms of the Settlement.

The Settlement, if finally approved, will, with the small exception of fewer than a dozen insurers who did not file the attestations necessary for the agreed-upon settlement procedure, resolve each insurer’s claims against the Government and will bring the vast majority of this longstanding and hard-fought case to a close.

The Settlement, negotiated at arms-length, is an excellent result for the Settlement Classes. The total of more than \$540 million represents a near total recovery for the Settlement Classes (subject to the offsets permitted by the Federal Circuit for CSR-specific claims) and fully releases

and resolves the Settlement Classes' claims under Section 1402 of the Patient Protection and Affordable Care Act ("ACA") against the Government for their failure to pay more than a hundred insurers their duly owed cost-sharing reduction reimbursements.

Plaintiff also proposes a streamlined notice program utilizing the contact information Class Counsel and the Settlement Administrator already possess, and based on the extensive communications Class Counsel has had with Settlement Class members in order for them to provide the necessary attestations to participate in the settlement.

To efficiently resolve this matter, the parties "request that a decision on the motion for preliminary approval of the settlement be made promptly on the papers or that a hearing on the motion for preliminary approval of the settlement be held at the earliest date available to the Court." Settlement ¶ 17.

For these reasons, Common Ground respectfully requests an order: (1) preliminarily approving the proposed settlement with Defendant for the Settlement Classes; (2) directing notice to the proposed Settlement Class in connection with the class action settlement, and approving the proposed forms and manner of notice; (3) authorizing retention of JND Legal Administration as Settlement Administrator; and (4) scheduling a hearing to determine whether the proposed settlement is fair, reasonable, and adequate under RCFC 23(e).

II. BACKGROUND

1. Procedural History

In section 1402 of the Patient Protection and Affordable Care Act ("ACA"), Pub. L. No. 111-148 (2010), 124 Stat. 119, Congress created the cost-sharing reduction ("CSR") program to lower the expenses associated with health insurance coverage offered for eligible customers. 42 U.S.C. § 18071. Under the CSR program, insurers must provide reductions to their eligible customers' cost-sharing expenses, such as reductions in co-payments and deductibles, and the

Secretaries of Health and Human Services (“HHS”) and the Treasury must reimburse insurers for those reductions. Section 1412 of the ACA, 42 U.S.C. § 18082, authorizes advance payment of premium tax credits (“APTCs”) to insurers. In addition, as one of three interrelated risk-mitigation programs, Congress created the risk corridors program in section 1342 of the ACA. 42 U.S.C. § 18062. Plaintiff’s respective claims arise under these provisions.

The government stopped making CSR reimbursement payments to issuers in October 2017 after the Attorney General of the United States concluded that such payments were not within any congressional appropriation. On June 27, 2017, Plaintiff Common Ground Healthcare Cooperative filed a Class Action Complaint on behalf of itself and others similarly situated, seeking risk-corridors damages under section 1342 of the ACA for benefit year 2016. Dkt. 1. On November 22, 2017, Plaintiff filed a First Amended Class Action Complaint which added a claim under section 1402 for unpaid cost-sharing reduction payments for the 2017 and 2018 benefit years. Dkt. 10.

On April 17, 2018, the Court certified the following class (the “2017-2018 CSR Class”):

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2017 or 2018 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a “timely and periodic” payment from the Government of an amount “equal to the value of the reductions” provided to its insureds.

Dkt. 30 at 17. In the same order, the Court appointed Plaintiff as the class representative and appointed Quinn Emanuel Urquhart & Sullivan, LLP lead counsel for the Class. *Id.*

On July 23, 2018, Plaintiff filed a Motion for Summary Judgment on behalf of the Class on its claims for unreimbursed cost-sharing reduction payments for the 2017 benefit year and first two financial quarters of the 2018 benefit year. Dkt. 36. Defendant filed a cross-Motion to Dismiss and Opposition to Plaintiff’s Motion for Summary Judgment. Dkt. 39. On February 15, 2019, the Court granted Plaintiff’s Motion for Summary Judgment and denied Defendant’s Motion to

Dismiss, holding that “plaintiff is entitled to recover the unpaid cost-sharing reduction reimbursements.” Dkt. 48 at 1.

On March 22, 2019, Plaintiff filed a Second Amended Class Action Complaint adding a claim under section 1402 for unpaid cost-sharing reduction payments for the 2019 benefit year. Dkt. 59. On May 29, 2020, the Court certified the following class (the “2019 CSR Class”):

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2019 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a “timely and periodic” payment from the Government of an amount “equal to the value of the reductions” provided to its insureds.

Dkt. 90 at 2. In the same order, the Court appointed Plaintiff as the class representative and appointed Quinn Emanuel Urquhart & Sullivan, LLP lead counsel for the Class. *Id.* at 3.

Defendant appealed this Court’s grant of Plaintiff’s Motion for Summary Judgment and Denial of Defendant’s Motion to Dismiss, and on August 14, 2020, the United States Court of Appeals for the Federal Circuit held that “the cost-sharing reduction reimbursement provision imposes an unambiguous obligation on the government to pay money and that the obligation is enforceable through a damages action in the Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491(a)(1).” *Sanford Health Plan v. United States*, 969 F.3d 1370, 1372-73 (Fed. Cir. 2020). The United States Court of Appeals for the Federal Circuit held in *Community Health Choice, Inc. v. United States*, 970 F.3d 1364, 1367 (Fed. Cir. 2020), that the Government was obligated to pay the plaintiff insurers the full CSR amounts owed each year under the statute, reduced by “the amount of additional premium tax credit payments that each insurer received as a result of the government’s termination of cost-sharing reduction payments.” The Federal Circuit also noted that, upon remand, the plaintiff insurers may prove that “other factors, such as market forces or increased medical costs” may have caused some of the silver-level premium increases

and if so, “the government’s liability is not reduced by the tax credits attributable to these other factors.” *Id.* at 1380.

On February 24, 2021, Plaintiff filed a petition for a writ of certiorari to the United States Supreme Court seeking review of the Federal Circuit’s September 30, 2020 decision entering judgment consistent with the Federal Circuit’s decision in *Community Health Choice*. *See* Pet. Writ Cert., *Common Ground Healthcare Cooperative v. United States* (U.S. Feb. 24, 2021) (No. 20-1200). On June 21, 2021, the United States Supreme Court denied Plaintiff’s petition. The Supreme Court also denied the Government’s conditional cross-petition for certiorari regarding the same (No. 20-1536). *See* Orders List (U.S. June 21, 2021). Additionally, on that same day, the Court denied the petition for writ of certiorari and the Government’s conditional cross-petition in *Maine Community Health Options v. United States* (No. 20-1162), which also sought review of the Federal Circuit’s August 14, 2020 decision. *See* Orders List (U.S. June 21, 2021).

2. Settlement Negotiations

With appeals exhausted, liability established, and a general framework for damages ordered, by mid-2021 the parties began discussing resolving damages without further litigation. Dkt. 149. During these conversations, the parties agreed that Class Counsel would engage an experienced actuarial expert to develop a streamlined methodology for settlement purposes, to be shared with the Department of Justice, after which the Government would review the methodology and provide any substantive feedback to Plaintiff’s counsel. Ex. 2, Dec. 3 2021 Letter. On December 3, 2021, Class Counsel provided the Government with a proposal from Mr. Mark Fish, Managing Director at FTI Consulting with more than 24 years of experience in the healthcare industry, which calculated the CSR settlement amount as the “Premium Tax, User Fee and HIT Increase” plus the “CSR Payments less Silver Load Offset.” *Id.* at 2; *see also* Ex. 3, FTI Report at 8. The proposal further broke out the calculation and provided data sources for the computation:

CSR Settlement: $\text{Step 1} = \text{APTC Payments} \times \text{Silver Load \%} \times (\text{Premium Tax \%} + \text{User Fee \%} + \text{HIT \%})$
 $+ \text{Step 2} = \text{CSR Payments} - (\text{APTC Payments} \times \text{Silver Load \%})$

FTI Report at 8.

For the next nearly two years, and with the help of the Court, the parties exchanged numerous letters and participated in numerous calls negotiating the proposed methodology—for example, whether to use federal, state, or county weighted-average silver loads to calculate any offset and the related methodology for averaging, or whether to include taxes and fees in the reimbursement. *See, e.g.*, Dkts. 157, 160, 162, 164, 165, 167-68, 171, 175, 182, 199-201. To streamline the process, Plaintiff’s methodology expressly did not consider the impacts of “higher premium rates due to Silver Loading leading to reduced membership,” “Risk Adjustment–based on statewide average which could be artificially high,” the “settlement payments on MLR” or “Silver Loading on overall insurer results.” FTI Report at 13.

In September 2023, the parties reached tentative agreement regarding the actuarial methodology to employ to calculate damages. Dkt. 202. However, in order to effectuate that methodology, the Government needed each Settlement Class Member to gather and provide the requisite data needed for the experts to compute the insurer’s damages. Dkt. 203. Specifically, one of the requirements for the settlement procedure was that each CSR Class Member provide an attestation to the United States specifying the Metal Levels for which each Settlement Class Member loaded CSR costs into premiums for each benefit year 2018-2020. Although the vast majority of Settlement Class Members provided these attestations, a small number of 2017-2018 CSR Class and 2019 CSR Class Members did not, despite repeated requests and other efforts to contact them from Class Counsel.

In parallel to this data gathering process, the parties negotiated and formalized the formal Settlement Agreement. *See, e.g.*, Dkt. 204. And in the intervening months, the parties and experts calculated the final settlement award on a per-insurer basis and finalized the draft Settlement.

With the settlement nearly finalized, the parties filed a Joint Motion to divide the two litigation classes into four subclasses, (1) the “2017 CSR Subclass,” (2) the “2018 CSR Subclass,” (3) the “2019 CSR Subclass,” and (4) the “Not-Pursuing-Claims-Beyond-2017 Subclass,” to enable the 2017 CSR Subclass, 2018 CSR Subclass, and 2019 CSR Subclass to move forward with a proposed settlement with the Government, and to give the Not-Pursuing-Claims-Beyond-2017 Subclass one last opportunity to provide necessary paperwork to join in any such settlement thus effectuating the resolution of the first, second, and third subclasses’ claims more expeditiously. Dkt. 256. On April 7, 2025, the Court ordered the classes so subdivided. Dkt. 258.

3. The Settlement Consideration and Release of Claims

The parties present this Settlement, which ensures a total release of the Settlement Classes’ claims “in exchange for” and “upon payment of the full amount” of an award by the United States in the amount set forth for each member” of the Settlement Classes as listed in Exhibits A and B, “inclusive of interest with each party to bear its own costs, attorney fees, and expenses.” Settlement ¶¶ 5-9. Similarly, the United States likewise “to the extent permitted by law, releases, waives, withdraws, and abandons any and all claims against the [Settlement Class] based upon, arising out of, or in any way directly related to CSR reimbursements” except “(a) any liability arising under Title 26, United States Code (Internal Revenue Code); (b) any criminal liability; and (c) any fraud.” *Id.* ¶ 11.

The Settlement has “been reviewed and [has] been accepted on behalf of the United States Attorney General.” *Id.* ¶ 10. Upon full payment, the Settlement Class and Defendant agree to jointly “stipulate[] to the dismissal of this action with prejudice.” *Id.* ¶ 12.

The parties agree that as soon as the Court preliminarily approves of the Settlement, Class Counsel shall effectuate notice to the class of the Settlement, the date of the fairness hearing pursuant to RCF 23(e), and the manner and deadline for written objections, if any. *Id.* ¶ 18. In the same pursuit of efficiency, the parties “request that a decision on the motion for preliminary approval of the settlement be made promptly on the papers or that a hearing on the motion for preliminary approval of the settlement be held at the earliest date available to the Court.” *Id.* ¶ 17.

4. Notice and Implementation of the Settlement

In accordance with Settlement section 17, Plaintiff proposes a streamlined notice program designed by proposed experienced Settlement Administrator JND Legal Administration. *See* Declaration of Leonard Greene (“Greene Decl.”), concurrently submitted herewith. Under Plaintiff’s proposal, JND Legal Administration, will send, by electronic mail, the Notice of Class Action Settlement (“Notice”) to all Settlement Class members (as listed on Exhibits A and B to the Settlement Agreement) at the e-mail addresses provided in connection with the opt-in notice process, and (if applicable) subsequently updated as part of the attestation process and/or the risk corridors attorney fee remuneration process (for overlapping CSR and risk corridor class members). *Greene Decl.* ¶ 3. For any email returned as undeliverable, the Administrator will send the Notice to the Settlement Class Member by first-class mail and make all reasonable efforts to contact the Settlement Class Member. *Id.* ¶ 4.

The Notice provides important information regarding the Settlement, along with the rights of Settlement Class members in connection therewith, including their rights (and the deadline) to withdraw from the Settlement Class under Rule 23(e)(4) or file a written objection to the Settlement under Rule 23(e)(5), as well as Class Counsel’s request for attorneys’ fees and litigation expenses. *See* *Green Decl. Ex A*; *see also* Settlement ¶¶ 19-21 (outlining objection process). The Notice also provides an explanation of the procedures for allocating and distributing the funds

pursuant to the Settlement, the date and time of the fairness hearing, and how to obtain more information. *See* Green Decl. Ex A.

III. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT

1. Legal Standard Governing Approval of Class Action Settlements

Settlement is a strongly favored method for resolving class action litigation. *See Sabo v. United States*, 102 Fed. Cl. 619, 626 (2011) (“In general, ‘[s]ettlement is always favored,’ especially in class actions where the avoidance of formal litigation can save valuable time and resources.”); *Berkley v. United States*, 59 Fed. Cl. 675, 681 (2004) (“Class actions, by their complex nature, carry with them a particularly strong public and judicial policy in favor of settlement.”).

RCFC 23(e) requires judicial approval of class action settlements.¹ Such approval is a two-step process. First, under RCFC 23(e)(1), the court performs a preliminary review of the terms of the proposed settlement to determine whether it is sufficient to warrant notice to the class and a hearing (the relief sought through this motion). Second, under RCFC 23(e)(2), after notice has been provided and a hearing held, the court determines whether to grant final approval of the settlement (the relief sought through a subsequent final approval motion). *See Furlong v. United States*, 131 Fed. Cl. 548, 550 (2017) (“In implementing RCFC 23(e), courts typically review the proposed settlement for a preliminary fairness evaluation and direct notice of the [proposed] settlement to be provided to the class, and then grant final approval of the proposed settlement following notice to the class and a fairness hearing.”); *see also* Manual for Complex Litigation (Fourth) § 13.14 (2020).

¹ “[RCFC 23] is modeled on Fed. R. Civ. P. 23, and while there are differences, cases from other federal courts that apply Fed. R. Civ. P. 23 are relevant to this court’s interpretation of RCFC 23.” *Dauphin Island Prop. Owners Ass’n v. United States*, 90 Fed. Cl. 95, 102 (2009).

Regarding the first step, a court should grant preliminary approval and authorize notice of a settlement to the class upon a finding that the court “*will likely be able*” to (i) finally approve the settlement under RCFC 23(e)(2) and (ii) certify the class for purposes of the settlement. *See* RCFC 23(e)(1)(B).

In considering whether final approval is likely, RCFC 23(e)(2) provides that courts consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Id.

In sum, preliminary approval should be granted where, as here, “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible [judicial] approval.” 4 William B. Rubenstein, *Newberg on Class Actions* § 13:13 (6th ed. 2023) (alteration in original); *see also Sutton*, 120 Fed. Cl. at 530 (“At the preliminary approval stage of the proceedings, the court needed only to consider whether the settlement had any obvious deficiencies.”); *Lambert v. United States*, 124 Fed. Cl.

675, 678 (2015) (preliminary approval granted by court upon finding no “collusive activity, preferential treatment, or other deficiencies” in the settlement).

At the second step, after preliminary approval has been granted and notice provided to the Settlement Class, although there are “no definitive list of factors that the Court must apply” to assess whether to finally approve a proposed settlement, the Court routinely looks at the following six factors which largely overlap with the four considerations during preliminary approval:

1. The relative strengths of plaintiffs’ case compared to the proposed settlement;
2. The recommendation of class counsel, taking into account the adequacy of class counsels’ representation;
3. The reaction of the class members to the proposed settlement, taking into account the adequacy of notice to the class members of the settlement terms;
4. The fairness of the settlement to the entire class;
5. The fairness of the provision for attorney’s fees; and
6. The ability of the defendant to withstand greater judgment, taking into account whether the defendant is a governmental actor or private entity.

Raulerson v. United States, 108 Fed. Cl. 675, 677 (2013) (internal citations omitted). And in evaluating these factors “[t]he Court has considerable discretion as to what weight to afford each factor in the factual context of the case before it, and settlement is always favored. *Id.* (internal citations omitted).

2. The Court “Will Likely Be Able” to Approve the Proposed Settlement Under Rule 23(e)(2)

A court may approve a proposed class action settlement upon finding it to be “fair, reasonable, and adequate.” RCFC 23(e)(2). In determining whether a settlement is fair, reasonable, and adequate, “courts consider both the settlement agreement’s substantive terms and the

negotiation process that led to it.” *Quimby v. United States*, 107 Fed. Cl. 126, 130 (2012); *see also Courval v. United States*, 140 Fed. Cl. 133, 138 (2018) (in approving settlement, “the court looks to the ‘paramount’ twin elements of procedural and substantive fairness”).

1. The Proposed Settlement is Procedurally Fair.

The first two elements under RCFC 23(e), whether class representatives and class counsel have adequately represented the class and whether the proposal was negotiated at arm’s length, assess procedural fairness. *See Courval*, 140 Fed. Cl. at 139 (“Procedural fairness is concerned with whether the settlement resulted from arms-length negotiations and whether plaintiffs’ counsel have possessed the experience and ability, and have engaged in the discovery, necessary to effective representation of the class’s interests.”) (internal citations omitted).

“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s length negotiations between experienced, capable counsel after meaningful discovery.” *In re Fed. Nat’l Mortg. Assoc. Secs., Derivative, & “ERISA” Litig.*, 4 F. Supp. 3d 94, 102 (D.D.C. 2013); *see also City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014) (applying an “initial presumption of fairness and adequacy” where “[s]ettlement was reached by experienced, fully-informed counsel after arm’s-length negotiations”), *aff’d sub nom. Arbuthnot v. Pierson*, 607 F. App’x 73 (2d Cir. 2015).

The proposed Settlement embodies all the hallmarks of a procedurally fair resolution under RCFC 23(e)(2). Class Counsel’s settlement posture was informed by the extensive, years-long litigation efforts that preceded the proposed Settlement, including an appellate ruling confirming that the Government is liable to the Settlement Classes for its failure “to make cost-sharing reduction payments under section 1402” and the additional holdings that, as to damages, the 2017 subclass is “entitled to recover as damages the full amount of unpaid cost-sharing reduction reimbursements” and that “the appropriate measure of damages” for the 2018 and 2019 subclasses

are the unpaid cost-sharing reduction reimbursements reduced by “the amount of additional premium tax credit payments that each insurer received as a result of the government's termination of cost-sharing reduction payments.” *Cnty. Health Choice*, 970 F.3d at 1367-71. As discussed above, Class Counsel zealously pursued this case—pioneering the theory of liability, litigating the claims for many years (in multiple courts), defeating the Government’s motion to dismiss (Dkt. 48), moving for and obtaining summary judgment (*id.*), obtaining certification of the four subclasses, three of which comprise the Settlement Class here (Dkts. 30, 90, 258), and securing a \$1.7 billion partial Judgment on behalf of the cost-sharing reduction Class (Dkts. 71, 111).

With clear guidelines from the Federal Circuit as to the appropriate damages, the parties turned to negotiating a settlement to avoid further delay to the Settlement Classes who were owed repayment between five and nine years ago. These negotiations, which involved complex actuarial calculations undertaken by experts, were conducted at arm’s length over a period of years. *Dauphin*, 90 Fed. Cl. at 107 (approving settlement that was “achieved through good-faith, non-collusive negotiation”). Class Counsel were well-informed of the facts and issues concerning damages streams and the relative strengths and weaknesses of each side’s litigation position. Class Counsel have decades of experience litigating complex class action and healthcare cases and have negotiated settlements in a wide range of cases. Dkt. 30 at 12-13 (“The court finds that Quinn Emanuel has the experience and resources necessary to handle class actions”). Class Counsel used their specific case knowledge and experience to negotiate the proposed Settlement, which will (if approved) fully resolve this complex and challenging case as to each class member that has filed attestations in this case. *See In re Fed. Nat’l Mortg. Assoc. Secs., Derivative, & “ERISA” Litig.*, 4 F. Supp. 3d at 107 (“The opinion of experienced counsel should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement”).

Government counsel, who are highly experienced and capable, vigorously advocated their client's positions in the settlement negotiations. And the Settlement has been reviewed and accepted by the Attorney General. "Absent fraud or collusion," as is the case here, courts "should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." *In re Graña y Montero S.A.A. Sec. Litig.*, 2021 WL 4173684, at *11 (E.D.N.Y. Aug. 13, 2012) (alterations in original); *Nat'l Treasury Emps. Union v. United States*, 54 Fed. Cl. 791, 797 (2002) ("[T]he professional judgment of plaintiff's counsel is 'entitled to considerable weight in the court's determination of the overall adequacy of the settlement.'").

2. The Proposed Settlement Provides Thorough Relief to the Class.

After assessing procedural fairness, courts look to the substantive fairness of a proposed settlement. A key factor in assessing whether to approve a class action settlement is a plaintiff's likelihood of success on the merits, balanced against the relief offered in settlement. *See* RCFC 23(e)(2)(C); *see also Barlow v. United States*, 145 Fed. Cl. 228, 234 (2019) ("Substantive fairness requires the Court to consider the balance of the likely costs and rewards of further litigation.").

(a) Settlement provides more relief than trial.

The Settlement Classes have a strong case, and the Settlement value, at a collective value of more than \$540 million, representing near total recovery, reflects that. The United States Court of Appeals for the Federal Circuit instructed that the damages here would be the full CSR amounts owed each year under the statute, reduced by "the amount of additional premium tax credit payments that each insurer received as a result of the government's termination of cost-sharing reduction payments." *Cnty. Health Choice, Inc.*, 970 F.3d at 1367. The Federal Circuit also noted that, upon remand, the plaintiff insurers may prove that "other factors, such as market forces or increased medical costs" may have caused some of the silver-level premium increases and if so,

“the government’s liability is not reduced by the tax credits attributable to these other factors.” *Id.* at 1380.

The Settlement value reflects this instruction and offers the parties’ best approximation of those net damages. As explained above, *see supra* § II(2), Common Ground retained experts at FTI Consulting who formulated an actuarial methodology to calculate the CSR amounts owed to the Settlement Classes and the premium tax credit payment values. *See generally* FTI Report. With very minor modifications, the Government adopted Plaintiff’s proposal.

And the Settlement is actually more favorable to Class Members than litigating damages, because it flexibly provides the opportunity for Class Members to elect between multiple methodologies in the pursuit of efficiency and/or increased damages. This is because the Government agreed, for purposes of for purposes of medical loss ratio (“MLR”) reporting and rebate calculations, to allow, but not to require Class Members to “choose to include the portion of the settlement amount net of any and all legal fees, costs and expenses (including, but not limited to, CSR reconciliation costs) incurred in pursuing and obtaining that settlement payment, rather than the entire settlement amount” and further allow Class Members to “report – for MLR purposes and rebate calculations – settlement payments (net of legal fees and costs) in the year actually received, rather than the year for which the CSR payments were originally owed” which is a boon to Class Members who are therefore not obliged to recalculate and repay old MLR payments. *See* Ex. 4, Sept. 19, 2023 Letter; *see also* Settlement ¶ 13.

Notably, the Settlement does not include any discounts for litigation risk or any other factors. And the Settlement award includes interest. *Id.* ¶¶ 5, 8.

The near total relief to the class is more than adequate considering “the costs, risks, and delay of trial and appeal.” Rule 23(e)(2)(C)(i). With the guiderails from the Federal Circuit’s

decision regarding the damages owed by Defendant to the Settlement Classes, there would be little to gain by expending considerable time and expense litigating damages to conclusion. *See Mercier v. United States*, 156 Fed. Cl. 580, 586-87 (2021) (“In addition to the[] risks of continued litigation, there is no question that further litigation would be expensive, complex, and likely of substantial duration.... A fair settlement is preferable to years of additional litigation.”). As it is, negotiating a suitable actuarial methodology for calculating damages and gathering the relevant data from each class member to employ the methodology has taken, quite literally, years. In contrast, the Settlement provides a recovery representing nearly 100% of the class’s net damages now.

(b) The Settlement will be effectively distributed.

“[T]he effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims” likewise favors settlement. Rule 23(e)(2)(C)(ii). As defined in the Notice plan below, distribution of relief to the class will be in a *pro rata* form, based on the individual losses suffered by each class member. The Settlement Administrator will facilitate notice. Because the Settlement Classes are already certified and are an opt-in group of class members, facilitating notice with the previously gathered contact information used in the opt-in and attestation processes will be simple.

(c) The proposed award of attorney’s fees is fair.

The terms of the proposed award of attorney’s fees, including the timing of payment is more than fair to the Class. *See* Rule 23(e)(2)(C)(iii). Assuming final approval of this Settlement, Class Counsel intends to move for attorney’s fees after final approval. Class Counsel intends to seek 5% of the Settlement award, consistent with its award for the judgments for the Risk Corridors classes. *See, e.g.*, Dkts. 153, 154. Class Counsel respectfully requests that the Court distribute 95% of the Settlement award pending Class Counsel’s fee request to ensure the Settlement Classes

expeditiously receive their long overdue damages, consistent with prior practice in this case. *See, e.g.*, Dkt. 152 (disbursing 95% of the judgment funds to class and holding 5% in escrow pending resolution of Class Counsel’s motion for fees).

(d) The Parties presently have no other relevant settlement agreements.

The Settlement is the only agreement made by the Parties in connection with the Settlement. There are no additional agreements to identify. *See* Rule 23(e)(2)(C)(iv).

3. The Proposed Settlement Treats Class Members Equitably.

The proposed Settlement contemplates that each class member receives “the full amount of unpaid cost-sharing reduction reimbursements” less any applicable “additional premium tax credit payments that each insurer received as a result of the government’s termination of cost-sharing reduction payments.” *Cnty. Health Choice, Inc.*, 970 F.3d at 1367-71. Such *pro rata* distributions of settlements are routinely employed and approved. *See, e.g., In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 581 (S.D.N.Y. 2008) (“Pro-rata distribution of settlement funds based on ... loss is clearly a reasonable approach.”); *In re TFL-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 7575004, at *4 (N.D. Cal. Dec. 27, 2011) (approving a *pro rata* plan and citing several cases for this holding, including *In re Vitamins Antitrust Litig.*, 2000 WL 1737867, at *6 (D.D.C. Mar. 31, 2000)). Thus, the allocation method set forth in the Notice treats all Settlement Class members equitably, further supporting preliminary approval of the Settlement.

IV. THE SETTLEMENT CLASSES ARE CERTIFIABLE

The second part of the preliminary settlement approval process is to determine whether the Action may be maintained as a class action for settlement purposes under RCFC 23. *See* RCFC 23(e)(1)(B)(ii). Here, the Court previously certified the 2017-2018 CSR Class on April 17, 2018. Dkt. 30 at 17. On May 29, 2020, the Court certified the 2019 CSR Class. Dkt. 90 at 2. In certifying

these classes, the Court found that the classes each satisfied RCFC 23(a)'s numerosity, commonality, typicality, and adequacy requirements, as well as that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Dkts. 30, 90.

On April 7, 2025, the Court granted the parties' joint motion to divide the 2017-2018 CSR Class into four subclasses: (1) the 2017 CSR Subclass, (2) 2018 CSR Subclass, (3) 2019 CSR Subclass, and (4) Not-Pursuing-Claims-Beyond-2017 Subclass. The first three subclasses overlap entirely with the Settlement Class definitions. *See* Settlement at 1 n.1.

The opt-in period has concluded and the entities that make up the Settlement Classes are set forth in the Settlement. *Id.* at Exs. A, B. Because the Court has already certified classes that are coextensive with the Settlement Classes, Common Ground respectfully submits that it has already effectively determined that, pursuant to RCFC 23(e)(1)(B) it "will likely be able to" certify the Settlement Classes.

V. NOTICE TO THE CLASSES SHOULD BE APPROVED

RCFC 23(c)(2)(B) requires the Court to direct to a class certified "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Similarly, RCFC 23(e)(1)(B) requires the court to "direct notice in a reasonable manner to all class members who would be bound" by a proposed settlement. Moreover, notice must "afford [interested parties] an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Given its familiarity with the case and its possession of relevant contact information for Settlement Class members, Plaintiff requests that the Court authorize Class Counsel's retention of JND as the Administrator for the Settlement. Under Plaintiff's proposal, JND Legal Administration, will send, by electronic mail, the Notice of Class Action Settlement ("Notice") to all Settlement Class members (as listed on Exhibits A and B to the Settlement) at the e-mail

addresses provided in connection with the opt-in notice process and (if applicable) subsequently updated as part of the attestation process and/or the risk corridors attorney fee remuneration process (for overlapping CSR and risk corridor class members). Greene Decl. ¶ 3. For any email returned as undeliverable, the Administrator will send the Notice to the Settlement Class Member by first-class mail and make all reasonable efforts to contact the Settlement Class Member. *Id.* ¶ 4.

The Notice provides important information regarding the Settlement, along with the rights of Settlement Class members in connection therewith, including their rights (and the deadline) to withdraw from the Settlement Class(es) under Rule 23(e)(4) or file a written objection to the Settlement under Rule 23(e)(5), as well as Class Counsel’s request for attorneys’ fees and litigation expenses. Green Decl. Ex. A; *see also* Settlement ¶ 19. The Notice also provides an explanation of the procedures for allocating and distributing the funds pursuant to the Settlement, the date and time of the fairness hearing, and how to obtain more information. Green Decl. Ex. A.

The means by which Plaintiff proposes providing notice of the Settlement to the Settlement Class members represents “the best notice that is practical under the circumstances” and easily satisfies the requirements of due process and RCFC 23. RCFC 23(c)(2)(b) (“The notice may be by one or more of the following: United States mail, *electronic means*, or other appropriate means.”). This also ensures as quick an approval process as possible, so that Settlement Class members can hopefully receive payment this year.

Accordingly, Plaintiff respectfully submits that the Court should approve the proposed manner and form of providing notice of the Settlement to the Settlement Class members.

VI. PROPOSED SCHEDULE OF SETTLEMENT-RELATED EVENTS

In connection with preliminary approval of the Settlement, the Court must also set dates for certain future events (*i.e.*, the fairness hearing, disseminating notice, and deadline for objecting

to the Settlement). Plaintiff respectfully proposes the schedule set forth in the chart below, as set forth in the proposed Preliminary Approval Order. Additionally, Plaintiff requests that the Court schedule the fairness hearing for a date 42 calendar days (7 weeks) after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter.

Class Counsel proposes this compressed schedule to maximize the chance that Settlement Class members receive their settlement payments this calendar year, since past practice has shown that the Treasury will not pay out amounts from the Judgment Fund until at least 60 days following a judgment from this Court. All Settlement Class members have been kept apprised of the status of the Settlement due to their need to submit attestations to participate in the Settlement. Class Counsel therefore respectfully believes that it has already effectively provided notice of the Settlement and that this schedule will balance due process with the reality that many Settlement Class members wish to receive their settlement funds this year, if possible.

Event	Proposed Deadline
Entry of order granting preliminary approval and directing notice to the class regarding the Settlement Agreements	X
Notice campaign to begin	X + 2 days
Last day for objections and requests for exclusion from the Settlement Class	X + 21 days
Last day for motions in support of final approval of settlement	X + 28 days
Final Approval (Fairness) Hearing	X + 42 days (Two weeks after the final approval motion deadline, or at the earliest convenience of the Court)

VII. CONCLUSION

For the foregoing reasons, Common Ground respectfully requests that the Court grant the attached proposed Order, which (1) preliminarily approves the proposed Settlement, (2) directs notice to the Settlement Classes, (3) authorizes retention of JND Legal Administration as the Settlement Administrator; and (4) schedules a fairness hearing to determine whether the proposed Settlement is fair, reasonable, and adequate under Rule 23(e).

Dated: August 15, 2025

Respectfully submitted,

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*Attorneys for Plaintiff Common Ground
Healthcare Cooperative and the Classes*

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

_____	)	
COMMON GROUND HEALTHCARE	)	
COOPERATIVE,	)	
	)	
Plaintiff,	)	
on behalf of itself and all others	)	
similarly situated,	)	
	)	
v.	)	No. 17-877
	)	Judge Davis
THE UNITED STATES,	)	
	)	
Defendant.	)	
_____	)	

SETTLEMENT AGREEMENT AND RELEASE

For the purpose of finally disposing of and settling the claims of the 2017 CSR Subclass, 2018 CSR Subclass, and 2019 CSR Subclass against Defendant in this action,¹ without any further judicial proceedings and without there being any trial or adjudication of any issue of law or fact, and without constituting an admission of liability on the part of the Defendant, and for no other purpose, the parties stipulate and agree as follows:

1. In section 1402 of the Patient Protection and Affordable Care Act (ACA), Congress created the cost-sharing reduction (CSR) program to lower the expenses associated with health insurance coverage offered for eligible customers. 42 U.S.C. § 18071. Under the CSR program, insurers must provide reductions to their eligible

¹ The Court certified the 2017-2018 CSR Class on April 17, 2018 (No. 17-877, ECF No. 30) and the 2019 CSR Class on March 22, 2019 (ECF No. 59). On April 7, 2025, the Court granted the parties' joint motion to divide the 2017-2018 CSR Class and the 2019 CSR Class into four subclasses: (1) the 2017 CSR Subclass, (2) the 2018 CSR Subclass, (3) the 2019 CSR Subclass, and (4) the Not-Pursuing-Claims-Beyond-2017 Subclass. Class members in the "2017 CSR Subclass" are listed on Exhibit A, and class members in the "2018 CSR Subclass" and "2019 CSR Subclass" (collectively, the "2018 Forward CSR Subclasses") are listed on Exhibit B.

customers' cost-sharing expenses, such as reductions in co-payments and deductibles, and the Secretaries of Health and Human Services (HHS) and the Treasury (collectively, the government) must reimburse insurers for those reductions.

2. The government stopped making CSR reimbursement payments in October 2017, after the Attorney General of the United States concluded that such payments were not within any congressional appropriation. On August 14, 2020, the United States Court of Appeals for the Federal Circuit held that "the cost-sharing reduction reimbursement provision imposes an unambiguous obligation on the government to pay money and that the obligation is enforceable through a damages action in the Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491(a)(1)." *Sanford Health Plan v. United States*, 969 F.3d 1370, 1372-73 (Fed. Cir. 2020).

3. The United States Court of Appeals for the Federal Circuit held in *Community Health Choice, Inc. v. United States*, 970 F.3d 1364, 1367 (Fed. Cir. 2020), that the government was obligated to pay the plaintiff insurers the full CSR amounts owed each year under the statute, reduced by "the amount of additional premium tax credit payments that each insurer received as a result of the government's termination of cost-sharing reduction payments." The Federal Circuit also noted that, upon remand, the plaintiff insurers may prove that "other factors, such as market forces or increased medical costs" may have caused some of the silver-level premium increases and if so, "the government's liability is not reduced by the tax credits attributable to these other factors." *Id.* at 1380.

4. Defendant asserts that beginning with the 2018 benefit year certain insurers were able to mitigate the effects of the government's failure to make CSR reimbursement

payments by increasing premiums. When insurers increased premiums on silver level plans to account for the lack of government CSR payments, that raised the benchmark premium for determining the amount of premium tax credits the government pays for all enrollees eligible for those tax credits. Therefore, Defendant asserts these increased premiums resulted in insurers receiving increased premium tax credit payments from the government. The Federal Circuit concluded in *Community Health* that “the Claims Court was required to credit the government with such tax credit payments in determining damages.” *Cnty. Health Choice*, 970 F.3d at 1379. This process of increasing premiums on silver plans to offset the absence of government payment of CSR costs through receipt of increased premium tax credits is generally referred to as “silver-loading,” and where insurers also increase premiums on some or all other metal level plans, the process is referred to as “broad-loading.” Because insurers were not permitted to silver-load or broad-load in 2017, any CSR reimbursement payments that the government failed to pay for the 2017 benefit year are owed in their entirety and are not subject to any reductions on the basis of silver-loading or broad-loading.

5. Following these decisions by the Federal Circuit, the government and Class Counsel began discussing potential resolution of CSR claims. As a result of these discussions, the parties have agreed to resolve their disputes and settle the claims in this action. The 2017 CSR Subclass has offered to settle its claims for the 2017 benefit year in exchange for a settlement payment by the United States in the amounts set forth for each member of the 2017 CSR Subclass, as listed on Exhibit A, inclusive of interest with each party to bear its own costs, attorney fees, and expenses.

6. Upon full payment of the settlement amount set forth in Exhibit A, less any amount that is withheld by the United States Department of the Treasury pursuant to 26 U.S.C. § 6402(d), 31 U.S.C. § 3716(c), or 31 U.S.C. § 3720A (or upon the election of a member of the 2017 CSR Subclass to accept a settlement payment of \$0), each member of the 2017 CSR Subclass that is not also a member of at least one of the 2018 Forward CSR Subclasses (a “2017 CSR Subclass Only Class Member”) will release, waive, withdraw, and abandon any and all claims against the United States, its agencies, instrumentalities, political subdivisions, officers, agents, and employees, based upon, arising out of, or in any way directly or indirectly related to any nonpayment by the government of CSR reimbursement amounts owed to the 2017 CSR Subclass for benefit year 2017 and onward, which claims any 2017 CSR Subclass Only Class Member has asserted, could have asserted, or may assert in the future, including but not limited to any and all claims for costs, expenses, attorney fees, and damages of any sort. The waiver and release described in this paragraph, however, shall not apply to, and shall not bar or otherwise preclude a 2017 CSR Subclass Only Class Member from asserting a claim against the government for reimbursement of CSR amounts that any such 2017 CSR Subclass Only Class Member incurs for any future year in which any federal or state law or regulation, or other official state or federal action (1) prohibits or limits the silver-loading or broad-loading of insurer premiums to account for the absence of government payment of CSR reimbursement amounts under Affordable Care Act Section 1402, or (2) otherwise prohibits or limits offsetting/mitigating the impact of the absence of government payment of CSR reimbursement amounts under Affordable Care Act Section 1402. In such circumstances, the waiver and release would not apply to those years where state or federal law or

regulation, or other official state or federal action, prohibits or limits such 2017 CSR Subclass Only Class Member from offsetting/mitigating the impact of unpaid CSR costs, but the waiver will apply and remain in effect for any subsequent years should such 2017 CSR Subclass Only Class Member be permitted to offset/mitigate to account for the absence of government payment of CSR reimbursement amounts under Affordable Care Act Section 1402. This paragraph shall not be construed as an admission by the United States of any future liability for any CSR reimbursement payments, even in the event that any official state or federal law, regulation, or action prohibits or limits any class member from silver-loading or broad-loading insurer premiums or otherwise offsetting or mitigating the impact of the absence of government payment of CSR reimbursement amounts.

7. For any member of the 2017 CSR Subclass that is also a member of at least one of the 2018 Forward CSR Subclasses, the payment and waiver provisions set forth in Paragraph 6 shall apply only to those class members' claims for benefit years prior to 2018, and the effects of this settlement and any payments made under it on the remainder of their claims shall be governed by Paragraphs 8 and 9, below.

8. With respect to any claims for non-payment of CSR reimbursement amounts for benefit years 2018 and onward, each member of the 2018 Forward CSR Subclasses (the members of which are listed on Exhibit B) has offered to settle its claims in exchange for a settlement payment by the United States in the amount set forth for each member of the 2018 Forward CSR Subclasses, as listed on Exhibit B, inclusive of interest with each party to bear its own costs, attorney fees, and expenses.

9. Upon payment of the full amount set forth in Exhibit B, less any amount that is withheld by the United States Department of the Treasury pursuant to 26 U.S.C. § 6402(d), 31 U.S.C. § 3716(c), or 31 U.S.C. § 3720A (or upon the election of a member of the 2018 Forward CSR Subclasses to accept a settlement payment of \$0), each member of the 2018 Forward CSR Subclasses will release, waive, withdraw, and abandon any and all claims against the United States, its agencies, instrumentalities, political subdivisions, officers, agents, and employees, based upon, arising out of, or in any way directly or indirectly related to any nonpayment by the government of CSR reimbursement amounts owed to any member of the 2018 Forward CSR Subclasses for benefit years 2018 forward, which claims any member of the 2018 Forward CSR Subclasses has asserted, could have asserted, or may assert in the future, including but not limited, to any and all claims for costs, expenses, attorney fees, and damages of any sort. The waiver and release described in this paragraph, however, shall not apply to, and shall not bar or otherwise preclude a member of the 2018 Forward CSR Subclasses from asserting a claim against the government for reimbursement of CSR amounts that such member of the 2018 Forward CSR Subclasses incurs for any future year in which a state or federal law or regulation, or other state or federal official action (1) prohibits or limits the silver-loading or broad-loading of insurer premiums to account for the absence of government payment of CSR payments under Affordable Care Act Section 1402, or (2) otherwise prohibits or limits offsetting/mitigating the impact of the absence of government payment of CSR reimbursement amounts under Affordable Care Act Section 1402. In such circumstances, the waiver and release would not apply to those years where state or federal law or regulation, or other official state or federal action, prohibits or limits such member of the

2018 Forward CSR Subclasses from offsetting/mitigating the impact of unpaid CSR costs, but the waiver will apply and remain in effect for any subsequent years should such member of the 2018 Forward CSR Subclasses be permitted to offset/mitigate to account for the absence of government payment of CSR reimbursement amounts under Affordable Care Act Section 1402. This paragraph shall not be construed as an admission by the United States of any future liability for any CSR reimbursement payments, even in the event that any official state or federal law, regulation, or action prohibits or limits any class member from silver-loading or broad-loading insurer premiums or otherwise offsetting or mitigating the impact of the absence of government payment of CSR reimbursement amounts.

10. The 2017 CSR Subclass's and the 2018 Forward CSR Subclasses' offers have been reviewed and have been accepted on behalf of the United States Attorney General.

11. Upon payment of the full amount set forth in Exhibit A and Exhibit B for each participating class member, less any amount that is withheld by the United States Department of the Treasury pursuant to 26 U.S.C. § 6402(d), 31 U.S.C. § 3716(c), or 31 U.S.C. § 3720A (or upon the election of a member of the 2017 CSR Subclass and the 2018 Forward CSR Subclasses to accept a settlement payment of \$0), the United States, to the extent permitted by law, releases, waives, withdraws, and abandons any and all claims against the 2017 CSR Subclass and the 2018 Forward CSR Subclasses based upon, arising out of, or in any way directly related to CSR reimbursements, regardless of whether they were included in the pleadings, including but not limited to all claims for costs, expenses, attorney fees, and damages of any sort. Notwithstanding the foregoing, the following

claims of the United States are specifically reserved and are not released: (a) any liability arising under Title 26, United States Code (Internal Revenue Code); (b) any criminal liability; and (c) any fraud. Consistent with the previous sentence, the United States specifically reserves and does not release any claims that the United States, or any relator acting on behalf of the United States, may bring or has brought or could have brought against any member of the 2017 CSR Subclass member or either of the 2018 Forward Subclasses in any case under the False Claims Act and/or related common law theories of action (e.g., payment by mistake, unjust enrichment) including, but not limited to, claims against class members Sentara Health Plans (formerly Optima Health Plans), HIOS IDs 20507 & 89242, in *United States of America, ex. rel. Ian Dixon, et al. v. Optima Health Plan, et al.*, No. 3:20-cv-62 (W.D. Va.).

12. Upon full payment of the settlement amounts set forth in Exhibit A and Exhibit B, less any amount that is withheld by the United States Department of the Treasury pursuant to 26 U.S.C. § 6402(d), 31 U.S.C. § 3716(c), or 31 U.S.C. § 3720A, the 2017 CSR Subclass and the 2018 Forward CSR Subclasses agree to join with the United States in stipulating to the dismissal of this action with prejudice.

13. Notwithstanding 45 C.F.R. §§ 153.710(h), 158.140, and 158.160, and any guidance or instructions issued thereunder, the government further agrees that, for purposes of medical loss ratio (“MLR”) reporting and rebate calculations (45 C.F.R. Part 158), members of the 2017 CSR Subclass and the 2018 Forward CSR Subclasses may, at each member’s option, choose to include the portion of the settlement amount net of any and all legal fees, costs, and expenses incurred in pursuing and obtaining that settlement payment, rather than the entire settlement amount. In addition, the government agrees that members

of the 2017 CSR Subclass and the 2018 Forward CSR Subclasses may, at each member's option, choose to report for MLR reporting purposes CSR settlement amounts received in the benefit year that such CSR settlement payment is received, rather than in the benefit year for which the CSR payments were owed.

14. This agreement is in no way related to or concerned with income or other taxes for which members of the 2017 CSR Subclass and the 2018 Forward CSR Subclasses are now liable or may become liable in the future as a result of this agreement.

15. The 2017 CSR Subclass and the 2018 Forward CSR Subclasses warrant and represent that no other civil action or suit with respect to the claims advanced in this civil action will be (subject to Paragraph 6 and Paragraph 9) filed in or submitted to any other court, administrative agency, or legislative body. The 2017 CSR Subclass and the 2018 Forward CSR Subclasses further warrant and represent that they have made no assignment or transfer to a third party of all or any part of its rights arising out of or relating to the claims advanced in this civil action.

16. This agreement is for the purpose of settling this civil action, and for no other purpose. Accordingly, this agreement shall not bind the parties, nor shall it be cited or otherwise referred to, in any other proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as is necessary to effect or enforce the terms of this agreement.

17. Class Counsel warrants and represents that it has been and is authorized to enter into this Settlement Agreement and Release on behalf of the 2017 CSR Subclass and the 2018 Forward CSR Subclasses. As soon as possible after the execution of this Settlement Agreement and Release, Class Counsel shall submit to the Court a motion for

preliminary approval of the settlement contemplated by this Settlement Agreement and Release. The motion shall include the proposed form of the order preliminarily approving this Settlement Agreement and Release. The parties shall request that a decision on the motion for preliminary approval of the settlement be made promptly on the papers or that a hearing on the motion for preliminary approval of the settlement be held at the earliest date available to the Court.

18. As soon as possible after the Court's preliminary approval of this Settlement Agreement and Release, Class Counsel shall notify all class members of the terms of this Settlement Agreement and Release and the date upon which the Court will hold a "Fairness Hearing" pursuant to RCFC 23(e), and the date by which class members must file their written objections, if any, to the Settlement Agreement and Release.

19. Any class member may express to the Court its views in support of, or in opposition to, the fairness, reasonableness, and adequacy of the proposed settlement. If a class member objects to the settlement, the objection shall be filed with the Court, with copies provided to Class Counsel and defendant's counsel, and the objection must include a signed, sworn statement that (a) identifies the case name and number; (b) describes the basis for the objection, including all citations to legal authority and evidence supporting the objection; (c) contains the objector's name, address, and telephone number, and if represented by counsel, the name, address, e-mail address, and telephone number of counsel; (d) indicates whether the objector has filed a claim form and opted-in to the case; and (e) indicates whether the objector intends to appear at the Fairness Hearing.

20. Class counsel and defendant's counsel may respond to any objection within ten (10) days after receipt of the objection.

21. Any class members who submit a timely objection to the proposed settlement may appear in person or through counsel at the Fairness Hearing and be heard to the extent allowed by the Court. Any class members who do not make and serve written objections in the manner provided in paragraph 19 shall be deemed to have waived such objections and shall forever be foreclosed from making any objections (by appeal or otherwise) to the proposed settlement.

22. After the deadline for filing objections and the responses to objections has lapsed, the Court will hold the Fairness Hearing at which it will consider any timely and properly submitted objections made by class members to the proposed settlement. The Court will decide whether to approve the Settlement Agreement and Release.

23. If this Settlement Agreement and Release is not approved by the Court in its entirety, this Settlement Agreement and Release will be void and of no force and effect whatsoever.

24. This document constitutes a complete integration of the agreement between the parties and supersedes any and all prior oral or written representations, understandings, or agreements among or between them.

25. This Settlement Agreement and Release shall be governed by the laws of the United States.

26. This Settlement Agreement and Release shall inure to the benefit of all parties and their heirs and/or successors.

27. The parties agree they will execute such documents and take such further action (including the prompt provision of any information needed to effect payment of the settlement amounts, and completion and prompt submission by Defendant of all required

Treasury or Fiscal Service Forms) as are necessary to carry out the provisions of this Settlement Agreement and Release.

28. The undersigned represent and warrant that they are fully authorized to execute this Settlement Agreement and Release on behalf of the parties.

AGREED TO:

DATED: 8/8/2025

DATED: 8/11/2025

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

Adam
Wolfson

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*Attorneys for Defendant United States of
America*

HIOS ID	Issuer Name	Total Settlement Amount for 2017
32536	ATRIO HEALTH PLANS, INC.	\$744,629.96
60536	Avera Health Plans	\$0.00
15287	BLUE CROSS & BLUE SHIELD OF RHODE ISLAND	\$2,384,359.45
18558	Blue Cross and Blue Shield of Kansas, Inc.	\$0.00
26065	BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA	\$7,429,833.05
27811	BLUECROSS BLUESHIELD KANSAS SOLUTIONS, INC.	\$4,440,640.38
82569	Boston Medical Center	\$15,402,807.36
70285	CA PHYSICIAN'S SERVICE DBA BLUE SHIELD OF CA	\$3,555,835.11
45127	Capital Advantage Assurance Co.	\$43,610.93
94788	Capital District Physicians' Health Plan (CDPHP)	\$5,018.48
10207	CareFirst BlueChoice, Inc.	\$335,195.47
28137	CareFirst BlueChoice, Inc.	\$418,513.76
86052	CareFirst BlueChoice, Inc.	\$0.00
45532	CareFirst of Maryland	\$528,650.22
77552	CARESOURCE	\$3,622,711.49
54192	CARESOURCE INDIANA, INC.	\$1,732,023.65
45636	CARESOURCE KENTUCKY CO.	\$4,303,746.23
50328	CARESOURCE WEST VIRGINIA CO.	\$89,800.35
47579	Chinese Community Health Plan	\$0.00
14630	Chorus Community Health Plans, Inc. (fka Children's Community Health Plan)	\$426,521.77
66252	Christus Health Plan	\$121,354.15
72034	Christus Health Plan	\$0.00
87416	Common Ground Healthcare Cooperative	\$10,542,927.12

HIOS ID	Issuer Name	Total Settlement Amount for 2017
38345	Dean Health Plan, Inc.	\$4,955,476.60
66699	Denver Health Medical Plan	\$6,063.52
78124	Excellus Health Plan, Inc.	\$15,291.35
88806	Fallon Community Health Plan	\$26,283.75
63312	Friday Health Plans of Colorado, Inc.	\$200,244.19
22444	GEISINGER HEALTH PLAN	\$0.00
75729	Geisinger Quality Options	\$0.00
94529	Group Health Cooperative of South Central Wisconsin	\$22,317.28
34102	Group Health, Inc.	\$78,756.48
40308	Group Hospitalization & Medical Services, Inc.	\$669,613.84
78079	Group Hospitalization & Medical Services, Inc.	\$90.00
94084	Group Hospitalization & Medical Services, Inc.	\$389,536.09
18350	Hawaii Medical Service Assn.	\$0.00
36194	HEALTH FIRST COMMERCIAL PLANS, INC.	\$2,817,386.96
95865	Health Plan of Nevada	\$0.00
47342	HEALTH TRADITION HEALTH PLAN	\$0
20173	HealthPartners Ins. Co.	\$0.00
19636	HMO Louisiana, Inc.	\$33,165.59
21032	Kaiser Foundation Health Plan of Colorado	\$0.00
89942	Kaiser Foundation Health Plan of Georgia, Inc.	\$156,398.60
94506	Kaiser Foundation Health Plan of the Mid-Atlantic States-DC	\$1,224.78
90296	Kaiser Foundation Health Plan of the Mid-Atlantic States-MD	\$63,371.39
95185	Kaiser Foundation Health Plan of the Mid-Atlantic States-VA	\$61,701.69

HIOS ID	Issuer Name	Total Settlement Amount for 2017
71287	Kaiser Foundation Health Plan of the Northwest-OR	\$14,310.27
23371	Kaiser Foundation Health Plan of the Northwest-WA	\$404,267.71
80473	Kaiser Foundation Health Plan of Washington	\$1,110,167.97
40513	Kaiser Foundation Health Plan, Inc.	\$261,138.16
60612	Kaiser Foundation Health Plan, Inc.	\$24,215.34
38498	LifeWise Health Plan of Washington	\$976,334.93
97176	Louisiana Health Service	\$40,501.02
58326	MercyCare HMO	\$744,143.39
11177	MetroPlus Health Plan, Inc.	\$25,454.56
61163	MINUTEMAN HEALTH, INC	\$1,067,484.30
73331	MINUTEMAN HEALTH, INC	\$287,589.87
77963	Moda Assurance Co.	\$0.00
39424	Moda Health Plan	\$0.00
56184	MVP Health Plan, Inc.	\$463,460.26
77566	MVP Health Plan, Inc.	\$406,386.81
81413	Network Health Plan	\$457,083.57
29341	Oscar Buckeye State Insurance Corp.	\$0.00
23818	Oscar Garden State Insurance Co.	\$0.00
10544	Oscar Health Plan of California	\$0.00
13877	Oscar Health Plan, Inc.	\$0.00
77739	Oscar Insurance Corp.	\$0.00
20069	Oscar Insurance Corp.	\$1,332,495.62
23552	Oscar Insurance Corp.	\$0.00
74289	Oscar Insurance Corp.	\$0.00
40572	Oscar Insurance Corp. of Florida	\$0.00
45845	Oscar Insurance Corp. of Ohio	\$0.00
10091	PacificSource Health Plans	\$0.00

HIOS ID	Issuer Name	Total Settlement Amount for 2017
23603	PacificSource Health Plans	\$0.00
60597	PacificSource Health Plans	\$68,888.81
74313	PARAMOUNT INSURANCE COMPANY	\$536,850.12
60829	Physicians Health Plan	\$160,115.21
49831	Premera Blue Cross	\$1,139,974.36
38344	Premera Blue Cross Blue Shield of Alaska	\$0.00
29698	Priority Health	\$9,497,198.62
56707	Providence Health Plan	\$41,407.38.
37833	Quartz Health Benefit Plans Corp.	\$2,589,106.18
85773	Quartz Health Benefit Plans Corp.	\$0.00
33235	Quartz Health Plan Corp.	\$0.00
27651	QUARTZ HEALTH PLAN CORPORATION	\$0
91058	QUARTZ HEALTH PLAN CORPORATION	\$160,545.91
38166	SECURITY HEALTH PLAN OF WISCONSIN, INC.	\$313,857.88
68781	SELECTHEALTH	\$16,341,918.82
20507	Sentara Health Plans (formerly Optima Health Plans)	\$4,455,124.77
89242	Sentara Health Plans (formerly Optima Health Plans)	\$0.00
26539	SHA dba FirstCare Health Plans	\$0.00
92499	Sharp Health Plan	\$25,312.75
52664	Summa Insurance Co., Inc.	\$21,128.56
85736	UCare Minnesota	\$95,369.42
54235	UnitedHealthcare of NY	\$18,557.38
38599	UNITEDHEALTHCARE OF THE MID-ATLANTIC INC	\$280,357.81
42261	Univ. of Utah Health Ins. Plans	\$945,062.42
16322	UPMC Health Options	\$2,329,917.99
75293	USAbles Mutual Ins. Co.	\$1,790,505.66

HIOS ID	Issuer Name	Total Settlement Amount for 2017
67243	Vantage Health Plan, Inc.	\$0.00
93689	Western Health Advantage	\$0.00

HIOS ID	Issuer Name	Settlement Amounts by Year			Total Settlement Amount for 2018-2020
		2018	2019	2020	
60536	Avera Health Plans	\$2,211,933.19	\$2,233,048.48	(\$9,598,033.65)	\$4,444,981.68
18558	Blue Cross and Blue Shield of Kansas, Inc.	\$5,918,375.05	\$6,173,657.48	\$6,273,706.96	\$18,365,739.50
82569	Boston Medical Center	\$21,376,257.27	\$3,204,877.71	(\$915,331.71)	\$24,581,134.99
45127	Capital Advantage Assurance Co.	(\$6,513,656.52)	\$4,813,390.04	(\$21,388,018.76)	\$4,813,390.04
94788	Capital District Physicians' Health Plan (CDPHP)	\$19,889.07	(\$31,391.26)	(\$65,100.33)	\$19,889.07
10207	CareFirst BlueChoice, Inc.	\$522,419.92	\$744,700.72	(\$709,816.63)	\$1,267,120.64
28137	CareFirst BlueChoice, Inc.	(\$1,758,421.66)	\$12,810,131.54	(\$17,806,143.37)	\$12,810,131.54
86052	CareFirst BlueChoice, Inc.	\$32,233.00	\$55,260.42	\$0.00	\$87,493.42
45532	CareFirst of Maryland	(\$61,342.58)	\$985,980.57	(\$1,591,152.63)	\$985,980.57
47579	Chinese Community Health Plan	(\$6,086,408.55)	(\$5,464,077.97)	(\$3,136,441.38)	\$0.00
14630	Chorus Community Health Plans, Inc. (fka Children's Community Health Plan)	\$4,608,475.48	\$3,572,599.86	\$4,244,564.00	\$12,425,639.35
66252	Christus Health Plan	(\$1,037,431.50)	(\$1,039,792.45)	\$924,936.93	\$924,936.93
72034	Christus Health Plan	(\$1,548,879.77)	(\$324,423.18)	\$0.00	\$0.00
87416	Common Ground Healthcare Cooperative	(\$2,924,242.82)	\$7,592,176.61	\$14,524,442.05	\$22,116,618.66
38345	Dean Health Plan, Inc.	\$3,858,025.81	\$5,310,921.48	\$4,755,568.06	\$13,924,515.35
66699	Denver Health Medical Plan	\$177,366.12	\$192,029.98	\$158,549.95	\$527,946.05
78124	Excellus Health Plan, Inc.	\$126,960.05	\$78,087.85	\$276,832.50	\$481,880.40
88806	Fallon Community Health Plan	\$487,332.31	\$410,498.21	\$342,380.05	\$1,240,210.56
63312	Friday Health Plans of Colorado, Inc.	(\$103,273.35)	\$810,469.35	\$1,194,996.64	\$2,005,466.00
34102	Group Health, Inc.	\$754,533.00	(\$2,015,654.17)	(\$1,069,198.86)	\$754,533.00
40308	Group Hospitalization & Medical Services, Inc.	\$428,119.45	\$424,021.87	(\$113,514.32)	\$852,141.32

HIOS ID	Issuer Name	Settlement Amounts by Year			Total Settlement Amount for 2018-2020
		2018	2019	2020	
78079	Group Hospitalization & Medical Services, Inc.	\$34,777.41	\$54,171.37	\$0.00	\$88,948.78
94084	Group Hospitalization & Medical Services, Inc.	\$148,803.31	\$449,883.32	(\$171,318.55)	\$598,686.62
18350	Hawaii Medical Service Assn.	\$1,400,034.31	\$1,263,212.03	\$1,309,342.27	\$3,972,588.60
95865	Health Plan of Nevada	\$349,214.74	Not part of class settlement for 2019- 2020	Not part of class settlement for 2019- 2020	\$349,214.74
20173	HealthPartners Ins. Co.	\$1,114.96	\$72,725.72	\$200,905.56	\$274,746.24
19636	HMO Louisiana, Inc.	\$0	\$0	\$0	\$0
21032	Kaiser Foundation Health Plan of Colorado	\$0	Not part of class settlement for 2019- 2020	Not part of class settlement for 2019- 2020	\$0
89942	Kaiser Foundation Health Plan of Georgia, Inc.	\$51,089,026.15	Not part of class settlement for 2019- 2020	Not part of class settlement for 2019- 2020	\$51,089,026.15
94506	Kaiser Foundation Health Plan of the Mid-Atlantic States-DC	\$55,430.36	Not part of class settlement for 2019- 2020	Not part of class settlement for 2019- 2020	\$55,430.36
90296	Kaiser Foundation Health Plan of the Mid-Atlantic States-MD	(\$8,658,029.97)	Not part of class settlement for 2019- 2020	Not part of class settlement for 2019- 2020	\$0.00
95185	Kaiser Foundation Health Plan of the Mid-Atlantic States-VA	\$0	Not part of class settlement for 2019- 2020	Not part of class settlement for 2019- 2020	\$0.00
71287	Kaiser Foundation Health Plan of the Northwest-OR	\$3,849,997.45	Not part of class settlement for 2019- 2020	Not part of class settlement for 2019- 2020	\$3,849,997.45
23371	Kaiser Foundation Health Plan of the Northwest-WA	\$745,516.75	Not part of class settlement for 2019- 2020	Not part of class settlement for 2019- 2020	\$745,516.75

HIOS ID	Issuer Name	Settlement Amounts by Year			Total Settlement Amount for 2018-2020
		2018	2019	2020	
80473	Kaiser Foundation Health Plan of Washington	\$4,805,242.01	Not part of class settlement for 2019-2020	Not part of class settlement for 2019-2020	\$4,805,242.01
40513	Kaiser Foundation Health Plan, Inc.	(\$42,082,049.56)	Not part of class settlement for 2019-2020	Not part of class settlement for 2019-2020	\$0.00
60612	Kaiser Foundation Health Plan, Inc.	\$92,401.10	Not part of class settlement for 2019-2020	Not part of class settlement for 2019-2020	\$92,401.10
38498	LifeWise Health Plan of Washington	\$2,529,850.63	\$2,045,164.92	(\$2,779,090.77)	\$4,575,015.55
97176	Louisiana Health Service	\$898,387.23	\$1,033,878.58	\$788,045.62	\$2,720,311.42
58326	MercyCare HMO	\$1,497,867.02	\$1,465,414.80	(\$1,362,090.34)	\$2,963,281.82
11177	MetroPlus Health Plan, Inc.	(\$38,050.94)	\$29,300.91	(\$99,194.03)	\$29,300.91
77963	Moda Assurance Co.	\$0.00	\$0.00	\$115,571.26	\$115,571.26
39424	Moda Health Plan	\$6,211,585.69	\$6,083,162.22	\$5,267,411.77	\$17,562,159.68
56184	MVP Health Plan, Inc.	\$489,744.70	\$122,590.86	\$197,587.54	\$809,923.10
77566	MVP Health Plan, Inc.	\$4,770,789.34	(\$765,971.74)	(\$1,117,110.07)	\$4,770,789.34
81413	Network Health Plan	\$62,486.66	\$159,967.89	(\$264,492.62)	\$222,454.56
29341	Oscar Buckeye State Insurance Corp.	\$0.00	(\$43,556.01)	(\$1,840,423.61)	\$0.00
23818	Oscar Garden State Insurance Co.	\$1,032,876.36	\$2,123,421.77	\$1,715,872.42	\$4,872,170.55
10544	Oscar Health Plan of California	\$240,304.14	\$1,051,219.86	(\$12,579,316.12)	\$1,291,524.00
13877	Oscar Health Plan, Inc.	\$0.00	\$66,432.75	(\$442,191.25)	\$66,432.75
77739	Oscar Insurance Corp.	\$0.00	\$63,267.59	(\$415,049.86)	\$63,267.59
20069	Oscar Insurance Corp.	\$16,394,396.41	\$11,763,642.16	\$7,844,835.63	\$36,002,874.20
23552	Oscar Insurance Corp.	\$429,648.55	\$1,939,165.19	(\$2,204,512.30)	\$2,368,813.73
74289	Oscar Insurance Corp.	\$86,647.35	\$186,379.04	(\$82,286.05)	\$273,026.39
40572	Oscar Insurance Corp. of Florida	\$0.00	(\$5,982,060.22)	(\$67,940,807.65)	\$0.00

HIOS ID	Issuer Name	Settlement Amounts by Year			Total Settlement Amount for 2018-2020
		2018	2019	2020	
45845	Oscar Insurance Corp. of Ohio	\$1,543,426.50	\$1,911,288.65	\$1,105,799.27	\$4,560,514.42
10091	PacificSource Health Plans	\$1,395,217.52	\$4,094,339.16	(\$2,682,591.99)	\$5,489,556.68
23603	PacificSource Health Plans	\$1,122,854.26	\$1,013,014.84	(\$1,275,544.49)	\$2,135,869.11
60597	PacificSource Health Plans	\$0.00	\$0.00	\$0.00	\$0.00
60829	Physicians Health Plan	\$463,225.20	\$646,365.53	\$586,389.42	\$1,695,980.15
49831	Premiera Blue Cross	\$4,542,017.65	\$4,626,032.95	(\$1,585,769.66)	\$9,168,050.60
38344	Premiera Blue Cross Blue Shield of Alaska	\$1,277,281.16	\$4,087,352.20	(\$3,941,987.03)	\$5,364,633.37
29698	Priority Health	\$4,939,662.75	(\$18,112,040.27)	(\$18,273,217.72)	\$4,939,662.75
56707	Providence Health Plan	\$8,047,279.93	\$6,431,979.25	\$5,802,424.15	\$20,281,683.33
37833	Quartz Health Benefit Plans Corp.	\$4,572,331.93	\$5,647,390.59	\$5,031,625.94	\$15,251,348.46
85773	Quartz Health Benefit Plans Corp.	\$0.00	\$0.00	\$65,018.77	\$65,018.77
33235	Quartz Health Plan Corp.	\$0.00	\$103,897.72	\$0.00	\$103,897.72
38166	SECURITY HEALTH PLAN OF WISCONSIN, INC.	4,055,222.32	\$1,485,288.50	\$ 0.00	\$5,540,510.82
20507	Sentara Health Plans (formerly Optima Health Plans)	(\$25,930,570.87)	\$4,122,791.46	\$1,017,154.25	\$5,139,945.71
89242	Sentara Health Plans (formerly Optima Health Plans)	\$0.00	\$0.00	\$0.00	\$0.00
26539	SHA dba FirstCare Health Plans	\$916,387.94	(\$6,455,765.43)	(\$1,995,054.57)	\$916,387.94
92499	Sharp Health Plan	\$1,915,683.71	\$1,764,037.46	(\$1,386,968.07)	\$3,679,721.17
52664	Summa Insurance Co., Inc.	\$544,658.59	\$331,258.21	(\$454,372.05)	\$875,916.80
85736	UCare Minnesota	(\$3,338,642.89)	(\$3,487,916.73)	(\$3,219,894.94)	\$0.00
54235	UnitedHealthcare of NY	\$69,258.41	Not part of class settlement for 2019-2020	Not part of class settlement for 2019-2020	\$69,258.41
42261	Univ. of Utah Health Ins. Plans	(\$4,614,796.49)	\$1,324,976.91	\$2,640,942.57	\$3,965,919.48

HIOS ID	Issuer Name	Settlement Amounts by Year			Total Settlement Amount for 2018-2020
		2018	2019	2020	
16322	UPMC Health Options	(\$17,580,405.13)	(\$22,244,361.68)	(\$20,387,742.45)	\$0.00
75293	USAble Mutual Ins. Co.	\$12,648,460.20	\$10,041,030.87	\$10,684,680.78	\$33,374,171.85
67243	Vantage Health Plan, Inc.	\$419,857.43	\$465,250.85	\$229,590.92	\$1,114,699.21
93689	Western Health Advantage	(\$466,018.54)	(\$551,934.95)	\$224,474.20	\$224,474.20

EXHIBIT 2

December 3, 2021

Via Email

Christopher J. Carney
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**Re: CSR Litigation Settlement Methodology
Privileged and Confidential Settlement Communication Subject to FRE 408**

Dear Counsel:

We are writing to follow up on our previous conversations where we discussed next steps for how the parties can potentially resolve the cost-sharing reduction (“CSR”) claims for the 2018, 2019, and 2020 benefit years short of full-blown litigation regarding the amount of CSR damages owed for these years. During those calls, the parties agreed that the undersigned plaintiffs’ counsel would engage an experienced actuarial expert to develop a streamlined methodology for settlement purposes, which we would share with the Department of Justice, and then the Government would review the methodology and provide any substantive feedback to us. Consistent with the parties’ agreement to attempt to resolve CSR claims subject to potential mitigation/offsets through settlement, FTI’s settlement methodology is attached and summarized below. We are providing this methodology to the Department of Justice for settlement purposes only, and it is privileged and confidential pursuant and subject to Federal Rule of Evidence 408.

The undersigned plaintiffs’ counsel retained an independent actuary from FTI Consulting to develop a methodology for calculating damages for each benefit year in accordance with the Federal Circuit’s decisions in *Sanford Health Plan v. United States*, 969 F.3d 1370 (Fed. Cir. 2020), and *Community Health Choice, Inc. v. United States*, 970 F.3d 1364 (Fed. Cir. 2020).¹

Mark Fish is the actuary who developed the attached proposed methodology. Mr. Fish is a Managing Director at FTI Consulting and has more than 24 years of experience in the healthcare industry, including as a former Chief Financial Officer at MVP Health Care and as a Consulting Actuary at Milliman. A summary of Mr. Fish’s qualifications and relevant experience is enclosed.

¹ Because the Federal Circuit’s CSR decisions require that the Government pay the entire amount of the CSR amounts owed for the 2017 benefit year, the 2017 benefit year would not be subject any offset or mitigation. *Community Health Choice*, 970 F.3d at 1372 (“We find no merit to the government’s argument that the insurers’ 2017 damages should be reduced.”).

FTI's methodology is a streamlined process that can be used to determine the CSR amounts owed and appropriate offsets for any ACA health plan in any state. The methodology has two key components:

- **First**, every plaintiff health plan should be reimbursed by the Government for the additional state premium taxes, Health Insurance Taxes (HIT) and federal user fees that they incurred due to Silver Loading. These are extra costs the health plans incurred as a result of the Government's failure to make required CSR payments. Therefore, any methodology that reduces health plans' CSR damages owed by increased APTC payments also must account for these increased premium and HIT taxes and user fees incurred by the plaintiffs.
- **Second**, plaintiff health plans should be paid the amount of unpaid CSR payments owed, reduced by the amount of increased APTC payments directly caused by the Government's failure to make required CSR payments. At a high level, this proposed settlement methodology formula is:

$$\text{CSR Settlement} = \text{Premium Tax, User Fee and HIT Increase} + \text{CSR Payments less Silver Load Offset}$$

As FTI explains, these calculations use some health plan-specific inputs and some government-level inputs. The proposed methodology uses health plan-specific inputs for the APTC payments received by the health plan and the unpaid CSR amounts. Each plaintiff health plan will determine the APTC payments it received subject to one of three scenarios: (1) no Silver Loading adjustment, in which case the APTC payments would equal zero in this particular calculation and there would be no offset of a health plan's cost-sharing reduction damages for APTC payments; (2) Silver Loading only applied to silver plans, in which case the only APTC payments considered would be for silver plans that were Silver Loaded; or (3) Silver Loading applied to all metallic plans, in which case the APTC payments considered would be for all Silver-Loaded metallic plans. Each plaintiff health plan also will determine the amount of unpaid CSR payments it was owed but not paid by the Government (using either a standard or simplified methodology). FTI explains each of these health plan-specific inputs in more detail in the attached.

The proposed methodology also uses state- and federal-level inputs. Specifically, the methodology uses state-based inputs for the Silver Load, which is calculated as a weighted-average of the Second Lowest Cost Silver Plan's (SLCSP) silver load by county based on ACA enrollment by county. This Silver Load is used to reduce the amount of APTC payments to only those directly attributable of the Government's termination of cost-sharing reduction payments. The proposed methodology also uses a state-based premium tax and federal user fee. The use of state-level averages is an important benefit of the methodology because using health-plan specific inputs for every data point would eliminate the advantages of developing a standard, universal methodology and provides no streamlining or universal application benefits. In other words, without a streamlined approach using state-level weighted averages, the parties would be forced to litigate

individualized insurer CSR damage calculations in each case, which we do not believe is in any party's interest. FTI explains each of these inputs in more detail in the attached.

While the attached document explains this methodology in greater detail (and we are happy to explain further and answer questions on a call), our proposed methodology can be summarized as follows:

$$\begin{aligned} \text{CSR Settlement: Step 1} &= \text{APTC Payments} \times \text{Silver Load \%} \times (\text{Premium Tax \%} + \text{HIT \%} + \text{User Fee \%}) \\ &+ \text{Step 2} = \text{CSR Payments} - (\text{APTC Payments} \times \text{Silver Load \%}) \end{aligned}$$

FTI's methodology is also in accordance with the Federal Circuit's CSR decision stating that "the Claims Court must reduce the insurers' damages by the amount of additional premium tax credit payments that each insurer received as a result of the government's termination of cost-sharing reduction payments." *Community Health Choice*, 970 F.3d at 1367. It is only those additional premium tax credit payments that were a "direct consequence of [the health plans'] mitigation efforts following the government's nonpayment of" cost-sharing reduction reimbursements that should be credited to the Government in this analysis. *Id.* at 1379.

The attached methodology also provides a universally applicable formula to settle the cost-sharing reduction claims for the 2018, 2019, and 2020 benefit years. For the 2017 CSR damages owed by the Government, those claims should be settled by stipulated judgments for the CSR amounts owed for 2017 consistent with the Federal Circuit's decision. *Community Health Choice*, 970 F.3d at 1372. While the parties could expend significant additional time and money litigating damages for each individual health plan plaintiff, we believe our proposed methodology benefits all parties. It strikes a balance between individualized plan-level inputs (unpaid CSR payments and APTC payments) while also using state- and federal-based inputs (Silver Load, premium and HIT taxes, and user fees). Likewise, it does not reflect other elements of the plaintiffs' damages, including, among other factors the significant downward impact on membership that plans experienced due to higher premiums from Silver Loading, the impact of Risk Adjustment, or MLR payments.

We suggest that as a next step we schedule a conference call at your team's earliest convenience with Mr. Fish and his colleagues at FTI, so that Mr. Fish can provide a further explanation of the methodology and answer your questions. Please feel free to include actuaries from CMS or others you believe would be helpful for this process. Of course, discussion during our call also would constitute confidential settlement communications protected by FRE 408. We look forward to scheduling this call and to receiving the Government's substantive response on the proposed methodology.

Sincerely,

/s/ Lawrence S. Sher

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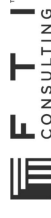
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EXHIBIT 3



Cost-Sharing Reduction *Proposed Settlement Payment Methodology*



Limits on Report Access and Distribution

- This report has been prepared exclusively for Reed Smith LLP, Crowell & Moring LLP, Faegre Drinker Biddle & Reath LLP and Quinn Emanuel Urquhart & Sullivan, LLP (collectively, “Counsel”) in connection with their representation of certain insurance health plans (collectively, “Clients”) for the sole benefit and use pursuant to terms of the arrangement between FTI Consulting, Inc. and Counsel.



Executive Summary



Scope of Work

- On behalf of Reed Smith LLP, Crowell & Moring LLP, Faegre Drinker Biddle & Reath LLP and Quinn Emanuel Urquhart & Sullivan, LLP (collectively, “Counsel”), FTI Consulting, Inc. (“FTI”) was asked to provide actuarial support with respect to certain aspects of the cost-sharing reductions (“CSR”) provisions of the Affordable Care Act (“ACA”).
- FTI’s work, performed under the direction of Counsel, was to assist Counsel with developing a proposed methodology for resolving numerous CSR lawsuits for 2018 and beyond pending in the U.S. Court of Federal Claims, through settlement with the U.S. Government. It is understood that FTI may be requested by Counsel to communicate with Government actuaries as part of this Engagement to refine the proposed methodology and to review and evaluate the comments of the Government.
- FTI developed a proposed methodology using the following steps:
 - Reviewed ACA provisions relating to CSR and Advanced Premium Tax Credits (“APTC”)
 - Analyzed ACA premium rates by State and County to determine the Second Lowest Cost Silver Plan (“SLCSP”) in each county
 - Determined the likely Silver Loading factor (“Silver Load”) for each of the SLCSPs
 - Determined the mitigation offset factor based on the Silver Load and other adjustments
 - Developed a formula to determine settlement estimates based on a two-step process

Background

■ Sections 1401 and 1402 of the ACA address premium reductions and cost-sharing reductions, respectively:

—*Premium Reductions*: Under Section 1401 of the ACA, an enrollee in an ACA exchange plan at any level of coverage is entitled to a premium assistance credit amount (“premium tax credit”) to offset part of the monthly premiums of the enrollee entitled to the premium tax credit. The ACA specifies a formula for determining the amount of premium tax credits, which depends on the applicable taxpayer’s household income. The premium tax credit cannot exceed the actual monthly premium for the individual’s plan.

- The benchmark plan is the second lowest-cost silver plan (“SLCSP”) that is available to each member of the household.

- People can use the premium tax credit to buy a bronze, silver, gold, or platinum plan.

- Most people want to receive the credit in advance because they can’t pay their entire monthly health insurance premiums without the credit, but if they choose, people can wait and receive the credit when they file their taxes.

—*Cost-Sharing Reductions*: Section 1402 of the ACA requires insurers to reduce an insured’s cost-sharing payments and requires periodic and timely payments to the insurer equal to the value of the cost-sharing reductions. Eligible insureds must be enrolled in one of three silver level plans offered on the exchanges with the amount of the cost-sharing reduction tied directly to the household income of the eligible insured.

- The three CSR Silver Plans have actuarial values (“AV”) of 73%, 87% or 94%, depending on the household income of the eligible insured (as compared to the standard Silver Plan which has a 70% AV).

■ On October 12, 2017, the government announced that it would cease payment of cost-sharing reduction reimbursements. However, the suspension of cost-sharing reduction reimbursements did not relieve the insurers of their statutory obligation to offer plans with cost-sharing reductions to customers.

— In response, for the 2018 benefit year, in the majority of states, state insurance regulators approved increased insurer premiums to address the expected CSR deficiency, a process known as “Silver Loading.”

■ Premium tax credits received by an insurer are subject to a premium tax, health insurance tax (in certain years) and user fees. CSR reimbursements are not subject to such taxes and fees.



Federal Circuit Ruling

- The United States Court of Appeals for the Federal Circuit held that the government violated its obligation to make cost-sharing reduction payments under section 1402 and that the statutory obligation is enforceable through a damages action in the U.S. Court of Federal Claims under the Tucker Act.
 - The government argued that it is entitled to offset from the CSR amounts due insurers the additional premium tax credits the insurers received through Silver Loading as a result of the government's termination of the CSR payments.
 - The Federal Circuit remanded the cases for a determination of the extent to which each insurer's damages were reduced by increased premium tax credits received as a result of Silver Loading.



Cost Sharing Reduction: *Settlement Methodology Framework*

CSR Settlement Methodology – Framework

■ Total CSR Settlement calculation will be a two-step process:

- Step 1 – determine extra Premium Tax, User Fees and Health Insurance Tax (HIT) paid due to increased APTC payments
- Step 2 – determine amount of CSR Payments less Silver Load Offset

$$\text{CSR Settlement} = \text{Premium Tax, User Fee and HIT Increase} + \text{CSR Payments less Silver Load Offset}$$

■ Insurer-specific Inputs:

- HIT Percentage
- APTC Payments - each insurer will determine the APTC payments received subject to one of 3 scenarios:
 - Scenario 1 – if no Silver Loading adjustment, then APTC Payments = \$0 (for 2018 modeling, assumed ND, SD & VT)
 - Scenario 2 – if Silver Loading only applied to Silver plans, then APTC Payments received for Silver plans that were Silver Loaded
 - Scenario 3 – if Silver Loading applied to all metallic plans, then APTC Payments received for all plans (for 2018 modeling, assumed CO, OK, WV, DE, IN & MS) as these states allowed for Silver Loading across all metallic plans
- CSR Payments - each insurer will determine amount of CSR payments owed by the government but not received

■ State-based Inputs:

- Silver Load - calculated as weighted-average of the SLCSP's Silver Load by county based on ACA enrollment by county
- Premium Tax % and User Fee % by State by Year

CSR Settlement: **Step 1 = APTC Payments x Silver Load % x (Premium Tax % + User Fee % + HIT %)**
 + Step 2 = CSR Payments – (APTC Payments x Silver Load %)

CSR Settlement Methodology – Number of SLCSPs in Each State (2018)

Findings:

- The Silver Load used by the SLCSP in each county determines the increased APTC payments (i.e., the mitigation offset), regardless of the Silver Load used by each individual plan (unless the individual plan is the SLCSP).
- The SLCSP by county in each state was determined, including an assessment of the distinct number of SLCSPs in each state.
- The fewer the number of distinct SLCSPs in each state, the less potential variance in the statewide Silver Load as compared to the Silver Load in any one particularly county in the state.
- Overall, most states had a relatively small number of distinct SLCSPs, as shown in the summary tables to the right.

State	Total Enrollees	Total Counties	Total SLCSPs
Alabama	170,211	67	2
Alaska	18,313	30	1
Arizona	165,758	15	2
Arkansas	68,100	75	2
California	1,521,524	58	7
Colorado	161,764	64	4
Connecticut	114,134	8	2
Delaware	24,500	3	1
District Of Columbia	19,289	1	1
Florida	1,715,227	67	9
Georgia	480,912	159	6
Hawaii	19,799	5	1
Idaho	94,507	44	5
Illinois	334,979	102	9
Indiana	166,711	92	4
Iowa	53,217	99	3
Kansas	98,238	105	2
Kentucky	89,569	120	3
Louisiana	109,855	64	4
Maine	75,809	16	2
Maryland	153,584	24	1
Massachusetts	267,260	14	9
Michigan	293,940	83	13
Minnesota	116,358	87	7
Mississippi	83,649	82	1
Missouri	243,382	115	4

State	Total Enrollees	Total Counties	Total SLCSPs
Montana	47,699	56	3
Nebraska	88,213	93	1
Nevada	91,003	17	2
New Hampshire	49,573	10	1
New Jersey	274,782	21	3
New Mexico	49,792	33	5
New York	253,102	62	2
North Carolina	519,803	100	6
North Dakota	22,486	53	2
Ohio	230,127	88	11
Oklahoma	140,184	77	1
Oregon	156,105	36	6
Pennsylvania	389,081	67	10
Rhode Island	33,021	5	1
South Carolina	215,983	46	1
South Dakota	29,652	67	5
Tennessee	228,646	95	4
Texas	1,126,838	254	12
Utah	194,118	29	4
Vermont	28,763	14	1
Virginia	400,015	134	7
Washington	243,227	39	2
West Virginia	27,409	55	2
Wisconsin	225,435	72	16
Wyoming	24,529	23	1

CSR Settlement Methodology – Silver Load by State (2018)

Approach:

- An overall Silver Load by state was calculated as a weighted-average of the Silver Load used by the SLCSP in each county and the number of enrollees in each county.
- 3 exceptions to this approach were as follows:

1. For states in which Silver Load information was not readily available (25 states, noted with “1”), the Silver Load was assumed to be 16.0% for initial modeling purposes, which is the weighted-average of the known Silver Loads. Actual Silver Loads would be determined prior to implementation for purposes of determining settlement payments.

2. For the 12 State Based Exchanges (noted with “2”), county-level enrollment data was not readily available; thus, the state-level Silver Load was calculated as the straight average of county-level Silver Loads.

3. For states in which the Silver Load information was not readily available for the SLCSP in each county (20 plans, covering 264 counties, in 11 states, noted with “3”), the county was excluded from the statewide average for initial modeling purposes.

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State	Weighted-Average Silver Load	State	Weighted-Average Silver Load
Alabama	16.0% ¹	Montana	20.3% ³
Alaska	16.0% ¹	Nebraska	16.0% ¹
Arizona	16.0% ¹	Nevada	11.0% ³
Arkansas	11.2%	New Hampshire	16.0% ¹
California	13.3% ²	New Jersey	16.0% ¹
Colorado	8.0% ²	New Mexico	12.6% ³
Connecticut	16.7% ²	New York	1.1% ²
Delaware	16.0% ¹	North Carolina	14.0% ³
District Of Columbia	16.0% ^{1,2}	North Dakota	16.0% ¹
Florida	16.0% ¹	Ohio	15.4% ³
Georgia	24.4%	Oklahoma	16.0% ¹
Hawaii	16.0% ¹	Oregon	7.1%
Idaho	16.0% ^{1,2}	Pennsylvania	34.3%
Illinois	16.0% ¹	Rhode Island	22.6% ²
Indiana	16.6% ³	South Carolina	24.0%
Iowa	13.3%	South Dakota	16.0% ¹
Kansas	16.0% ¹	Tennessee	15.0% ³
Kentucky	10.4% ³	Texas	16.0% ¹
Louisiana	16.0% ¹	Utah	30.0%
Maine	18.6%	Vermont	16.0% ^{1,2}
Maryland	16.9% ²	Virginia	12.1% ³
Massachusetts	16.0% ^{1,2}	Washington	10.2% ²
Michigan	16.9% ³	West Virginia	16.0% ¹
Minnesota	16.0% ^{1,2}	Wisconsin	16.0% ¹
Mississippi	16.0% ¹	Wyoming	16.0% ¹
Missouri	18.7% ³		



Premium Tax & User Fee Summary by State (subject to final verification by year)

State	Premium Tax %	User Fee %	State	Premium Tax %	User Fee %
Alabama	1.60	3.50	Montana	2.75	3.50
Alaska	2.70	3.50	Nebraska	0.50	3.50
Arizona	2.00	3.50	Nevada	3.50	3.50
Arkansas	4.00	2.00	New Hampshire	2.00	2.00
California	2.00	2.00*	New Jersey	1.00	3.50
Colorado	2.00	2.00*	New Mexico	4.00	2.00
Connecticut	1.50	2.00*	New York	1.75	2.00*
Delaware	2.00	3.50	North Carolina	1.90	3.50
District Of Columbia	2.00	2.00*	North Dakota	1.75	3.50
Florida	1.75	3.50	Ohio	1.00	3.50
Georgia	2.25	3.50	Oklahoma	2.25	3.50
Hawaii	4.26	3.50	Oregon	1.50	2.00
Idaho	1.50	2.00*	Pennsylvania	2.00	3.50
Illinois	0.50	3.50	Rhode Island	2.00	2.00*
Indiana	1.30	3.50	South Carolina	1.25	3.50
Iowa	1.00	3.50	South Dakota	2.50	3.50
Kansas	1.00	3.50	Tennessee	2.50	3.50
Kentucky	1.80	2.00	Texas	1.75	3.50
Louisiana	5.50	3.50	Utah	2.25	3.50
Maine	2.00	3.50	Vermont	2.00	2.00*
Maryland	2.00	2.00*	Virginia	2.25	3.50
Massachusetts	2.28	2.00*	Washington	2.00	2.00*
Michigan	0.95	3.50	West Virginia	3.00	3.50
Minnesota	2.00	2.00*	Wisconsin	2.00	3.50
Mississippi	3.00	3.50	Wyoming	0.75	3.50
Missouri	2.00	3.50			

*Estimated User Fee

Estimated Settlement



Premium Tax, User Fee and HIT Increase

CSR Payments less Silver Load Offset



Example #1

One SLCSP in all Counties: South Carolina

- South Carolina has the same SLCSP in all counties.
- A single statewide SLCSP decreases model calculation complexity by reducing the need to adjust the state load percentage by county level attribution.
- Twelve additional states also have one SLCSP in all counties:
 - AK, DE, DC, HI, MD, MS, NE, NH, OK, RI, VT & WY

Example #2

State Mandated Silver Load Amount: Pennsylvania

- Pennsylvania's Silver Load amount was set by the state.
- A state mandated Silver Load eliminates the need to identify the SCLSP.
- A uniform statewide Silver Load decreases model calculation complexity by reducing the need to adjust the load percentage by county level attribution.

Example #3

SLCSP varied by County: Georgia

- Georgia has six distinct insurers identified as the SLCSP across its 159 counties.
- Georgia's Silver Load is calculated using a weighted-average of the 6 SLCSPs based on total enrollees by county.

Model Inputs
CSR Payments
APTC Payments
Premium Tax Percent
User Fee Percent
Health Insurance Tax Percent
Silver Loading Percent

Other Parameters Considered but not Reflected in Methodology

- Impact of higher premium rates due to Silver Loading leading to reduced membership
- Impact of Risk Adjustment – based on statewide average which could be artificially high
- Impact of settlement payments on MLR
- Impact of Silver Loading on overall insurer results

Data Sources

■ CSR and APTC Data

- https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018_Open_Enrollment

■ Plan Rate Data

- <https://www.healthcare.gov/health-plan-information-2018/>
- <https://www.cms.gov/CCIIO/Resources/Data-Resources/sbm-puf>
- <https://www.cms.gov/ccio/programs-and-initiatives/health-insurance-market-reforms/state-gra>

■ Geographical Data

- <https://www.census.gov/cgi-bin/geo/shapefiles/index.php>

■ Silver Load Data

- <https://www.kff.org/health-reform/issue-brief/how-the-loss-of-cost-sharing-subsidy-payments-is-affecting-2018-premiums/>
- https://www.serff.com/serff_filing_access.htm

■ User Fee Data

- <https://www.cms.gov/newsroom/fact-sheets/final-hhs-notice-benefit-and-payment-parameters-2018>
- <https://www.kff.org/health-reform/slide/state-decisions-for-creating-health-insurance-exchanges/>

■ Premium Tax Data

- <https://content.naic.org/sites/default/files/publication-ret-zu-retaliation-volume-one.pdf>
- <https://insurance.maryland.gov/Pages/premium-tax/index.aspx>
- <https://www.michigan.gov/treasury/0,4679,7-121--542489--,00.html>
- <https://www.revenue.state.mn.us/insurance-premium-tax>
- <https://www.dor.ms.gov/business/insurance-premium>
- <https://insurance.mo.gov/industry/faq/premtax.php>
- <https://doi.nebraska.gov/insurers/schedule-company-fees-taxes-and-deposits>

- https://tax.nv.gov/FAQs/Insurance_Premium_Tax__FAQ%E2%80%99s/
- <https://www.nh.gov/insurance/companies/premiumtax/documents/instructions-medical-2020.pdf>
- https://www.state.nj.us/treasury/taxation/insurance_over.shtml
- https://www.santafenewmexican.com/news/legislature/new-mexico-house-committee-oks-health-insurance-premium-tax-hike/article_823ad0ce-6be1-11eb-9237-8f8103429ab5.html
- https://www.dfs.ny.gov/apps_and_licensing/insurance_companies/company_fees_taxes_charges_and_deposits
- https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-228.5.html
- <https://www.insurance.nd.gov/schedule-company-fees-taxes-and-deposits>
- https://tax.ohio.gov/static/communications/publications/brief_summaries/2009_brief_summary/insurance_tax_domestic.pdf
- <https://www.oid.ok.gov/regulated-entities/financial/premium-tax/#1584980648252-6d098e1a-100e>
- <https://dfr.oregon.gov/ireg/Pages/healthpremium.aspx>
- <https://www.revenue.pa.gov/TaxTypes/Corporation%20Taxes/Pages/Gross%20Premiums%20Tax.aspx>
- <http://webserver.rilin.state.ri.us/Statutes/TITLE44/44-17/44-17-1.HTM>
- <https://www.sctatehouse.gov/code/t38c007.php>
- https://sdslegislature.gov/Statutes/Codified_Laws/2038642
- <https://codes.findlaw.com/tn/title-56-insurance/tn-code-sect-56-4-205.html>
- <https://comptroller.texas.gov/taxes/insurance/licensed.php>
- <https://insurance.utah.gov/licensee/insurers/company-licensing/fee-statement-for-ucaa>
- <https://legislature.vermont.gov/statutes/section/32/211/08551>
- http://www.wvlegislature.gov/legisdocs/2015/committee/interim/TAX_20150915105201.pdf
- https://drive.google.com/file/d/126PVQMqe5iVH5O3wUHAjpt8_r2QRIH1R/view



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EXHIBIT 4



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September 19, 2023

By Electronic Mail

Albert S. Iarossi
Assistant Director
United States Department of Justice
Civil Division, National Courts Section
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Albert.S.Iarossi@usdoj.gov

Re: Confidential Settlement Communication Subject to Fed. R. Evid. 408

Dear Al:

We appreciate your letter of September 7, 2023, and the government's willingness to work in good faith toward reaching a compromise on the outstanding issues the parties have been discussing towards settlement of pending CSR claims. While we continue to believe the CSR plaintiffs are correct on the merits of the unresolved issues, we recognize that all settlements involve compromise and we are encouraged by the government's movement on several points as outlined in your letter. As a result, we believe the parties now have an acceptable framework to enable us to finalize a viable CSR settlement. Of course, like you, we do not yet have authority to bind our clients to a settlement, but based on your September 7, 2023, letter, we believe we are now at a point where the parties should start the process of drafting the agreement, exchanging/verifying relevant data inputs, and seeking settlement authority from our respective clients.

To that end, we understand that, if approved, the basic terms of the agreed-upon settlement framework will include the following:

- Settlement payments owed to each CSR plaintiff plan would be calculated pursuant to the Step 1 and 2 formulas and offset percentages outlined in "Option B" of FTI's attachment to my August 23, 2023, letter, which includes the previously agreed-upon silver-load factors.
- CSR damages for benefit years 2018, 2019, and 2020¹ would be compensable under the settlement, and in return, claims for years past 2020 would be waived unless there was

¹ Class members would also obtain payment for unpaid CSR reimbursements for benefit year 2017.

Albert S. Iarossi
Assistant Director

- 2 -

September 19, 2023

government action² that eliminated or materially impaired a plaintiff's ability to continue to silver-load.

- The parties would engage in an expedited process for confirming the APTCs and CSRs for each settling plaintiff, but for those plaintiffs that only silver-loaded on silver plans, only the APTCs for the silver plans would be used.
- Step 1 payments would be calculated at 100% for each plaintiff but would be "netted" against any negative amounts calculated in Step 2 for each plaintiff within a given year; however, there will be no netting of alleged government overpayments received by any plaintiff across years, such that any negative total of Step 1 plus Step 2 damages for any plaintiff for any year would count as \$0.
- At its option, a settling plaintiff could report – for MLR purposes and rebate calculations – settlement payments (net of legal fees and costs) in the year actually received, rather than the year for which the CSR payments were originally owed.

Understanding that there may be some details to work out, we believe that this basic settlement framework to which we have agreed in principle would be acceptable to a significant number of the CSR plaintiffs.

Finally, we would like to expedite the process for finalizing settlement to the extent possible. We understand a key first step is for you to prepare a memorandum to your DOJ superiors and HHS officials that explains and recommends that the government approve the CSR settlement. Ideally, we think that memorandum should be submitted in advance of our next JSR filing due date of September 29, in order to give the parties a rational basis to request continuation of litigation stays for purposes of finalizing the settlement. Recognizing that writing this memorandum primarily falls on your (and David's) shoulders, please let us know how we can be of assistance. For example, we could draft an initial detailed description of the agreed-upon settlement methodology reciting in more detail the bullet points outlined above.

Moreover, it would be helpful for the government to specify as soon as possible what information it needs from plaintiffs so that plaintiffs can begin the process of gathering that information.

If there are any additional items, logistical or otherwise, that we should discuss, please feel free to contact me and I will coordinate with the other CSR plaintiffs' counsel.

Very truly yours,



William L. Roberts

cc: David.M.Kerr@usdoj.gov
Jon.Dettmann@faegredrinker.com

² Your September 7, 2023, letter states that this would apply to "the government," but we would need clarification that this would include *any* government action – including state or federal – that could legally restrict an issuer's ability to silver-load.

Albert S. Iarossi
Assistant Director

- 3 -

September 19, 2023

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE
COOPERATIVE,

Plaintiff,
on behalf of itself and all others
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. 1:17-cv-00877-KCD
(Judge Davis)

DECLARATION OF LEONARD GREENE

I, Leonard Greene, hereby declare as follows:

1. I am an Assistant Director with JND Legal Administration (“JND”). I am fully familiar with the facts contained herein based upon my personal knowledge, and if called as a witness, could and would testify competently thereto. I submit this declaration at the request of Class Counsel in connection with the above-captioned action (the “Action”).

2. JND has formulated the following Notice Plan to deliver Notice of the Settlement to Settlement Classes Members.

3. JND will send, by electronic mail, the Notice of Class Action Settlement (“Notice”) to all Settlement Classes members (as listed on Exhibits A and B to the Settlement Agreement) at the e-mail addresses provided in connection with the opt-in notice process, and (if applicable) subsequently updated as part of the attestation process and/or the risk corridors attorney fee remuneration process (for overlapping CSR and risk corridor class members). A true and correct copy of this Notice is attached as **Exhibit A**.

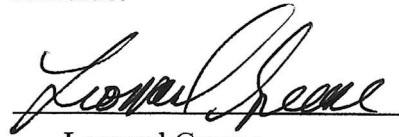
4. For any email returned as undeliverable, JND will send the Notice to the Settlement Classes Member by first-class mail and make all reasonable efforts to contact the Settlement Classes Member.

5. The Notice provides important information regarding the Settlement, along with the rights of Settlement Class members in connection therewith, including their rights (and the deadline) to withdraw from the Settlement Class under Rule 23(e)(4) or file a written objection to the Settlement under Rule 23(e)(5), Class Counsel's request for attorneys' fees and litigation expenses. The Notice also provides an explanation of the procedures for allocating and distributing the funds pursuant to the Settlement, the date and time of the Fairness Hearing, and how to obtain more information.

6. The Notice provides that Settlement Classes Members may request exclusion by sending a website-based or email request by 19 days after the Notice is sent out, or a written request to the Settlement Administrator that was postmarked by the same date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of August, 2025 in Denver, Colorado.


Leonard Greene

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

If you are a member of the 2017 CSR Subclass, 2018 CSR Subclass, and/or 2019 CSR Subclass preliminarily certified by the United States Court of Federal Claims in the *Common Ground Healthcare Cooperative v. United States* cost-sharing reduction litigation, please read this Notice for important settlement information.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

THIS NOTICE MAY AFFECT YOUR RIGHTS; PLEASE READ CAREFULLY.

TO: All entities belonging to the 2017 CSR Subclass, 2018 CSR Subclass, and/or 2019 CSR Subclass preliminarily certified by the United States Court of Federal Claims in *Common Ground Healthcare Cooperative v. United States*, Case No. 1:17-cv-00877-KCD.

- This legal notice has been sent to you by order of a federal court. Please read this notice carefully and fully. It contains important settlement information.
- This notice is intended to advise you of the pending settlement and of your rights with respect to it. This includes, but is not limited to, the right to object to the settlement and the right to withdraw from the Settlement Classes.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION LAWSUIT:	
DO NOTHING	If you intend to participate in the settlement and have no objections, <u>there is nothing you need to do at this time.</u>
WITHDRAW FROM THE SETTLEMENT CLASSES	You can exclude yourself from the settlement by withdrawing from the Settlement Subclass(es) to which you belong. You will not receive a settlement payment as contemplated under the settlement agreement and will retain the right to pursue your claims against the United States.
OBJECT TO THE SETTLEMENT	If you object to the settlement, you may file an objection with the Court in the manner outlined in this notice. If you object and the Court grants final approval of settlement despite your objection, you will remain bound by the settlement.

- Your rights and options, and the deadlines to exercise them, are explained in this notice.
- Any questions? Read on and visit www.CSRClassAction.com.

What This Notice Contains

Basic Information.....	2	Distribution of Settlement Payments	4
Your Options	2	Getting More Information	4
Fairness Hearing	4		

Basic Information

1. Why did I receive this notice?

You are receiving this notice because government records show that you are a member of one or more of the 2017 CSR Subclass, 2018 CSR Subclass, and/or 2019 CSR Subclass (collectively, the “Settlement Classes”) preliminarily certified by the United States Court of Federal Claims in the class action lawsuit *Common Ground Healthcare Cooperative v. United States*, Case No. 17-cv-00877 C.

The purpose of this notice is to inform you that the parties have resolved the Settlement Classes’ claims against Defendant United States of America for a cash payment pursuant to the terms of the Proposed Settlement Agreement (“Settlement”). If finally approved, the Settlement will resolve each Class Member’s claims against the Government.

2. What does the Settlement provide?

The Settlement ensures a total release of the Settlement Classes’ claims in exchange for and upon payment of the full amount of an award by the United States in the amount set forth for each member of the Settlement Classes as listed in Exhibits A and B of the Settlement Agreement, inclusive of interest with each party to bear its own costs, attorney fees, and expenses. Similarly, the United States, to the extent permitted by law, releases, waives, withdraws, and abandons any and all claims against the Settlement Classes based upon, arising out of, or in any way directly related to CSR reimbursements except (a) any liability arising under Title 26, United States Code (Internal Revenue Code); (b) any criminal liability; and (c) any fraud.

3. What am I giving up in exchange for the Settlement benefits?

If the settlement becomes final, members of the Settlement Classes will release the United States from liability for any claims directly or indirectly related to any nonpayment by the government of CSR reimbursement amounts from 2017 onward, and will not be able to sue the United States any further about those issues.

Your Options

4. Do I need to opt in to the Settlement?

No. There is no requirement to opt into the Settlement. If you intend to participate in the Settlement and have no objections, **there is nothing you need to do at this time.**

5. Can I exclude myself from the Settlement?

Yes. Pursuant to Rule 23(e)(4) of the Court of Federal Claims, you have the opportunity to exclude yourself from the Settlement by withdrawing from the Settlement Classes. If you withdraw from the Settlement Classes, you will retain your right to continue to sue the United States for your CSR-related claims.

6. How can I exclude myself from the Settlement?

Attached you will find a document titled “Settlement Class Opt-Out Form.” If you choose to withdraw from the Settlement Classes, **it is extremely important** that you read, sign, and return the Settlement Class Opt-Out Form electronically via the website Class Counsel has established for this litigation, or by email, mail, courier, or facsimile to JND Class Action Administration (via the below addresses or facsimile number). The various locations and methods by which you may submit a Settlement Class Opt-Out Form are listed below:

By Internet:

<http://www.CSRClassAction.com/optout>

- A copy of the Settlement Class Opt-Out Form may also be downloaded at this URL.

By Email:

info@CSRClassAction.com

By Mail:

CSR Class Action
c/o JND Class Action Administration
PO Box 91349
Seattle, WA 98111

By Facsimile:

1-833-894-4523

7. What is the deadline to be excluded from the Settlement?

The Settlement Class Opt-Out Form **must be** submitted, faxed, postmarked, or delivered on or before 19 days after the date of this notice, that is, **on or before** X + 21 days.

8. How will any attorneys’ fees be paid in this case?

Class Counsel will apply to the Court for its attorneys’ fees. As fees, Class Counsel intends to seek 5% of the amounts awarded to the Settlement Class members. The Court, in its discretion, may award Class Counsel less than a 5% fee.

9. Can I object to the Settlement?

Any class member may express to the Court its views in support of, or in opposition to, the fairness, reasonableness, and adequacy of the Settlement. If a class member objects to the Settlement, the objection must be filed with the Court, with copies provided to Class Counsel and defendant’s counsel. The objection must include a signed, sworn statement that (a) identifies the case name and number; (b) describes the basis for the objection, including all citations to legal authority and evidence supporting the objection; (c) contains the objector’s name, address, and telephone number, and if represented by counsel, the name, address, e-mail address, and telephone number of counsel; (d) indicates whether the objector has filed a claim form and opted-in to the case; and (e) indicates whether the objector intends to appear at the Fairness Hearing.

If you object, and the Court grants final approval of the Settlement despite your objection, you will remain bound by the Settlement.

Any class members who do not make and serve written objections in the above manner will be deemed to have waived such objections and will be foreclosed from making any objections to the proposed Settlement.

10. What is the deadline to object to the Settlement?

The deadline to object to the Settlement is **X + 21 days**.

11. What is the difference between objecting to the Settlement and excluding yourself from the Settlement Classes?

Excluding yourself from the Settlement tells the Court you no longer want to be a member of the Settlement Classes. If you exclude yourself, you have no basis to object to the Settlement as you will no longer be a class member.

Objecting is telling the Court you do not like something about the Settlement. You can object only if you are a member of the Settlement Classes. If you object and the Court grants final approval of the Settlement despite your objection, you will still be bound by the Settlement.

Fairness Hearing

12. When will the Fairness Hearing occur?

The Court will hold a Fairness Hearing, at which it will consider any timely and properly submitted objections made by class members to the Settlement, at **DATE AND TIME**. There is no requirement that you attend the Fairness Hearing in order to participate in the Settlement, withdraw from the Settlement Classes, or object to the Settlement. The Court will consider all written objections submitted in a timely fashion according to the procedures set forth above.

13. May I speak at the Fairness Hearing?

Class members who properly submit timely objections may be heard in person or through counsel at the Fairness Hearing to the extent allowed by the Court.

14. Will the Settlement automatically become final after the Fairness Hearing?

The Settlement will not be final unless and until the Court grants final approval of the Settlement at or after the Fairness Hearing and after any appeals are resolved in favor of the settlement.

Distribution of Settlement Payments

15. How will Settlement payments be distributed?

If and when the Court grants final approval of the Settlement, Class Counsel will submit the resulting executed and approved settlement agreement to the United States for payment. Once the United States makes that payment, Class Counsel will then ask the Court to authorize immediate distribution of 95% of the amounts paid to the Settlement Class members. The remaining 5% of the funds will be subject to Class Counsel's fee petition and the Court's subsequent fee award.

Getting More Information

16. What if I need more information or have additional questions?

If you have additional questions about this Notice, you may visit the website set up by Class Counsel at www.CSRClassAction.com, or you may contact Class Counsel directly:

Adam B. Wolfson
Quinn Emanuel Urquhart & Sullivan, LLP

865 S. Figueroa Street
Los Angeles, California 90017
(213) 443-3000
adamwolfson@quinnemanuel.com

Please do **not** contact the United States Court of Federal Claims with questions or requests for information.

Settlement Class Opt-Out Form

UNITED STATES COURT OF FEDERAL CLAIMS
Common Ground Healthcare Cooperative v. United States
Case No. 17-cv-00877 C

1. Fill out this form completely and legibly. **It must be submitted, postmarked, faxed or delivered to the Claims Administrator (who has been retained by Class Counsel for this case and whose address is at Paragraph 5 below) on or before [DATE].**

PLEASE NOTE: A notice has been sent to your address based on information in the Government's records. It is your responsibility to ensure that the information you provide on this form is complete and accurate, and that you are entitled to a distribution of money arising out of the above lawsuit.

2. Please write the full name of the person or entity that is a 2017 CSR Subclass, 2018 CSR Subclass, and/or 2019 CSR Subclass member and wishes to opt out of the Settlement.

3. Please fill in the following information for the QHP issuer named above.

Address: _____

Telephone number: _____

Name, telephone number, and email address for person at QHP issuer that will act as contact for this opt out request:

4. By signing your name in the space below, you are declaring under penalty of perjury under the laws of the United States and applicable state laws:

(a) That the above-listed QHP issuer is a 2017 CSR Subclass, 2018 CSR Subclass, and/or 2019 CSR Subclass member and wishes to opt out of the Settlement described in the accompanying Notice (*Common Ground Healthcare Cooperative v. United States*); and

(b) That you are authorized by the above-listed QHP issuer to sign this document on behalf of the QHP issuer and thereby bind the above-listed QHP issuer.

Sign Your Name: _____ Date: _____

Print Your Name: _____

Position at QHP issuer: _____

Note: If you represent an entity making a claim, such as a corporation, partnership, or trust, please identify the name of that entity in response to Question 2, but sign in your own name as a representative of that entity.

5. Submit this completed form to:

By Internet:

<http://www.CSRClassAction.com/optout>

- A copy of the Class Action Opt-Out Notice Form may also be downloaded at this URL.

By Email:

info@CSRClassAction.com

By Mail:

CSR Class Action
c/o JND Class Action Administration
PO Box 91349
Seattle, WA 98111

By Facsimile:

1-833-894-4523

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE
COOPERATIVE,

Plaintiff,
on behalf of itself and all others
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. 1:17-cv-00877-KCD
(Judge Davis)

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT WITH DEFENDANT AND TO
DIRECT NOTICE TO THE SETTLEMENT CLASS**

On August 15, 2025, Class Counsel filed their Unopposed Motion for Preliminary Approval of Settlement with Defendant and to Direct Notice to the Settlement Class. Class Counsel requests that the Court (1) preliminarily approve the Proposed Settlement Agreement with Defendant for the Settlement Classes; direct notice to the proposed Settlement Classes in connection with the class action settlement, and approve the proposed forms and manner of notice; authorize retention of JND Legal Administration as Settlement Administrator; and (4) schedule a hearing to determine whether the proposed settlement is fair, reasonable, and adequate under RCFC 23(e).

Having reviewed the Motion and accompanying memoranda, record, the arguments of counsel, and the relevant authorities, the Court hereby orders that the Motion is **GRANTED**. The Court finds preliminary approval of the Proposed Settlement Agreement is appropriate because Class Counsel has shown that that the Court will likely be able to finally approve the settlement under RCFC 23(e)(2) and certify the class for purposes of the settlement. *See* RCFC 23(e)(1)(B).

Accordingly, the Court grants preliminarily approval of the Proposed Settlement Agreement with Defendant for the Settlement Classes; directs notice to the proposed Settlement Classes in connection with the class action settlement, in the manner described in the August 15, 2025 Declaration of Leonard Greene and utilizing the proposed form of notice in Exhibit A thereto; authorizes retention of JND Legal Administration as Settlement Administrator; and schedules a hearing to determine whether the proposed settlement is fair, reasonable, and adequate under RCFC 23(e). The schedule on which the above events shall proceed is as follows:

Event	Deadline
Notice campaign to begin	The date of this Order + 2 days
Last day for objections and requests for exclusion from the Settlement Class	The date of this Order + 21 days

Event	Deadline
Last day for motions in support of final approval of settlement	The date of this Order + 28 days
Final Approval (Fairness) Hearing	The date of this Order + 42 days

SO ORDERED.

Dated:

KATHRYN C. DAVIS
Judge