

**WORKING DRAFT – 09/05/24**

**NOT AN EXECUTION VERSION**

Confidential Settlement Communication Without Prejudice

**Subject to Rule 408 and/or other similar applicable state rules or common law privileges**

### **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (and as further defined in Section A.1 below, the “Agreement”) is made and entered among: (i) Centene Corporation (“Centene”) and each of its current and former subsidiaries and affiliates as further defined in Section A.2 below, the “Centene Entities”), and (ii) the State of Florida by and through its Attorney General, and as authorized by the Florida Agency for Health Care Administration (“AHCA”), the Florida Office of Insurance Regulation (“FL OIR”), ~~and the Florida Department of Health (“FL DOH”) and the Florida Inspectors General (“FL OIG”)~~ (collectively, and as further defined in Section A.11 below, the “Attorney General,” “State of Florida” or the “State,” as applicable) (the Centene Entities and the State are collectively referred to as the “Parties” and separately as a “Party”). This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all potential claims arising from or in any way related to the “Covered Conduct” (as defined in Section A.3) in Florida during the defined time period running from January 1, 2016, to December 31, 2021 (the “Settlement”).

**Commented [KAV1]:** We would like FL OIG to continue to be explicitly listed.

### **RECITALS**

WHEREAS, the State has been reviewing the operations of the Centene Entities and their Pharmacy Benefit Manager, Envolve Pharmacy Solutions, Inc. (“Envolve”);

WHEREAS, the Centene Entities expressly deny liability, any wrongdoing, and/or any violation of any federal or state statute or regulation or common law;

WHEREAS, the Centene Entities recognize the importance of providing high quality and cost-effective pharmacy benefits and services to the State and the State's need for transparency around the costs associated with those services;

WHEREAS, the State acknowledges Centene's good faith and responsible corporate citizenship in reaching this resolution;

WHEREAS, the State requires full transparency from the Centene Entities around the costs and fees associated with those services paid for by the State;

WHEREAS, the Parties have investigated the facts and have analyzed the relevant legal issues regarding concerns raised during the State's review;

WHEREAS, the Parties have each considered the costs and delays associated with any continued review, and have reached an agreement to resolve any and all claims, filed, unfiled, or which could be filed, arising from or in any way relating to the Centene Entities' provision of pharmacy benefits or services in connection with any Health Care Coverage (as that term is defined in Section A.6) provided by Centene Entities and/or conduct that could have been alleged by the Releasers;

WHEREAS, the Parties believe the Settlement set forth herein (i) avoids the uncertainties of continued review and assures that the benefits reflected herein are obtained and (ii) is fair, reasonable and adequate and in the best interest of the people of the State of Florida;

WHEREAS, the State and Centene Entities agree that neither this Agreement, nor any statement made in the negotiation thereof shall be deemed or construed to be a concession as to any claim, an admission, evidence of any violation of any statute or law, evidence of any liability or wrongdoing by one or more Centene Entities or Releasees, or evidence of the truth of any of the claims or allegations made during the review;

WHEREAS, arms-length settlement negotiations have taken place between the Centene Entities and the State; and

WHEREAS, Hope Florida, through The Hope Florida Foundation, Inc., serves a mission that is important to the policy goals of the State of Florida.

### **AGREEMENT**

**NOW, THEREFORE, IT IS HEREBY AGREED** by and among the State and Centene Entities, by and through their respective counsel, that there is a settlement between the State and the Centene Entities as set forth below.

**A. Definitions.** As used in this Agreement, the following capitalized terms have the meanings specified below.

1. “Agreement” means this Settlement Agreement and Release, together with any exhibits attached hereto.
2. “Centene Entities” means Centene Corporation, Sunshine State Health Plan, Inc., Celtic Insurance Company, Centene Management Company, and Envolve Pharmacy Solutions, Inc., and any other subsidiaries and affiliates of Centene, except for the following entities: WellCare of Florida, Inc., WellCare Prescription Insurance, Inc., and WellCare Health Insurance of Arizona, Inc. As used in this Section A.2 and in Section A.7, “subsidiary,” “affiliates” and “affiliated” include entities directly or indirectly controlling, controlled by or under common control or ownership by and/or with any of the Centene Entities.
3. “Covered Conduct” means any and all acts, conduct, omissions, events or transactions, whether known or unknown and whether discovered or undiscovered, during the period from January 1, 2016, up to and including December 31, 2021, relating to the operation or delivery of, or payment for, all pharmacy benefits or services by any of the Centene Entities as part of, or in connection with, the provision of Health Care Coverage, including, but not limited to the following: (i) the payment or reimbursement to or from AHCA or any other state departments, divisions, agencies, plans, or programs for any pharmacy benefits or services, including but not limited to, any alleged mis-allocation or non-allocation of payments; (ii) the adjudication of pharmacy benefit claims by any of the Centene Entities; and (iii) the reporting (directly or indirectly) by any of the Centene Entities to AHCA, FL OIR, FL DOH, or any other state department, division, agency, plan or program.

4. "Execution Date" means the date on which this Agreement is executed by the last party to do so.
5. "Parties" has the meaning ascribed to it in the opening paragraph of this Agreement.
6. "Health Care Coverage" means the offering or provision of health insurance or coverage of health care and/or behavioral health services in the State of Florida by any Releasee, including but not limited to coverage provided as part of the Medicaid managed care program, the Children's Medical Services programs, Medicare Advantage or policies offered or sold in the individual insurance market.
7. "Releasees" means (i) the Centene Entities; and (ii) each of the Centene Entities' respective past, present and future officers, board members, directors, principals, agents, servants, employees, successors, assigns, affiliates, advisors, agents, consultants, insurers, trusts (including trusts established for the benefit of any Releasee), trustees, protectors, beneficiaries, officers, managers, members, direct or indirect owners and/or shareholders, beneficiaries of direct or indirect owners and/or shareholders, partners (general or limited), representatives, parents, subsidiaries, and transferees, attorneys and legal representatives, as well as the predecessors, successors, heirs, executors, administrators, legatees and assigns of each of the foregoing. Specifically excluded from this definition are any third-parties not related to or affiliated with the Centene Entities, including all manufacturers, distributors, or sellers of pharmaceutical products or pharmacy benefit or services, as well as any non-affiliated subcontractors. (The intent of this provision is to ensure that entities unaffiliated with the Centene Entities and other Releasees are not released, even though they may have participated in the provision of pharmacy benefits or services to the health plans of the State of Florida pursuant to a contractual relationship with one or more of the Releasees.) Furthermore, this release shall not in any way prevent Centene Entities from seeking indemnification against its insurers.
8. "Released Claims" means any and all civil claims of any nature, including the State's state and federal statutory and common law claims, in law or equity, that could have been brought by any of the Releasors against any of the Releasees related to or arising out of in any way the Covered Conduct both known or unknown, including all claims of any and all state departments, divisions, agencies, bureaus, plans, or programs of the State, including the State's state and federal statutory, regulatory, and/or common law claims, in law or equity, and by any other person acting or purporting to act in *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer or any other capacity on behalf of the State of Florida or any state departments and divisions, agencies, bureaus, plans, and/or programs, of the State of Florida.

9. “Releasers” means the State of Florida and the Attorney General as defined in Section A.413.
10. “Settlement Amount” has the meaning ascribed to it in Section B.2 of this Agreement.
11. The “Hope Florida Donation” has the meaning ascribed to it in Section B.2. of this Agreement.
12. “Settlement Balance” has the meaning ascribed to it in Section B.2 of this Agreement.
13. “State of Florida,” the “State,” or the “Attorney General” mean the State of Florida, by and through its Attorney General, including but not limited to AHCA, FL OIR, FL DOH, ~~FL OIG~~ and all other state departments and divisions, agencies, bureaus, plans, and/or programs, of the State of Florida (i) for which the Centene Entities provided any pharmacy benefits or services, (ii) which paid or reimbursed any of the Centene Entities for providing such pharmacy benefits or services, (iii) which have jurisdiction over such pharmacy benefits or services provided by any of the Centene Entities, or (iv) which could have claims related to the Covered Conduct against any of the Centene Entities.

**Commented [KAV2]:** As stated above, we would like FL OIG to be explicitly listed - can you explain the reason for the removal? Even if this language is removed, we understand that the subsequent language including “all other states departments and divisions, agencies, bureaus, plans, and/or programs, of the State of Florida” includes FL OIG. We would expect an email exchange confirming that the parties are in agreement on this point if the explicit reference to OIG is removed.

**B. Settlement Amount and Other Obligations of the Parties.**

1. Each Party will be responsible for its own costs, expenses and attorneys’ fees.
2. Following the Execution Date at the times and manner set forth below, the Centene Entities shall cause payments in the total aggregate amount of Sixty-Seven Million, Forty Eight Thousand, Six Hundred and Eleven Dollars (**\$67,048,611**) (“Settlement Amount”) to be made as directed by the State. Specifically, the Attorney General directs that (i) ~~in accordance with the provisions of this paragraph. Of the Settlement Amount~~, the Centene Entities shall pay Ten Million Dollars (**\$10,000,000**) as a one-time donation to The Hope Florida Foundation, Inc. (“Hope Florida Donation”), and (ii) ~~t-~~ The Centene Entities shall pay the balance of the Settlement Amount, Fifty-Seven Million, Forty Eight Thousand, Six Hundred and Eleven Dollars (**\$57,048,611**), to AHCA (“Settlement Balance”). The Centene Entities have no authority to direct or influence the manner in which the State has allocated or may in the future allocate the Settlement Amount. Centene

shall have no obligation or liability with respect to any this or any further allocation or distribution of the Settlement Amount or any dispute that may arise with respect to any such allocation or distribution, among Releasers or their counsel. As directed by the Attorney General, ~~t~~The Hope Florida Donation shall be paid within seven (7) days of the Execution Date by wire transfer to an account of The Hope Florida Foundation, Inc., in the manner to be directed in writing by the Attorney General pursuant to the Notice provisions of this Agreement. The Centene Entities' obligation to pay the Hope Florida Donation shall be fully satisfied and extinguished upon completion of the wire transfer deposit of such installment into the account of The Hope Florida Foundation, Inc., as directed by the Attorney General. The Settlement Balance shall be paid in two equal installments. The installments shall be paid by wire transfer to an account of AHCA in the manner to be directed in writing by AHCA pursuant to the Notice provisions of this Agreement. The first installment shall be paid within forty-five (45) days of the Execution Date and the second installment shall be paid no later than one year following the first installment. In no event shall the aggregate total of the amounts paid pursuant to this paragraph exceed the Settlement Amount. The Centene Entities' obligation to pay each installment of the Settlement Balance shall be fully satisfied and extinguished upon completion of the wire transfer deposit of such installment into the AHCA account as directed by ~~the Attorney General~~AHCA~~the State.~~

3. It is expressly agreed by the Parties that the payment of the Settlement Amount in the manner directed by the State in ~~to be paid pursuant to this Agreement~~accordance with Section B.2 ~~t~~ fully and completely satisfies any repayment or reimbursement obligation (including any amount that may need to be paid to the federal government) of any Releasees that arise from or relate in any way to the Covered Conduct and the Released Claims that are being released pursuant to this Settlement. It is further agreed that the Settlement Amount as paid in the manner directed

by the State represents the full amount to resolve all claims by the State of Florida resulting from the Covered Conduct.

4. The Centene Entities agree to assist the State in calculating the appropriate allocation of the Settlement Amount should the federal government assert a claim against the Settlement Amount.

5. The Centene Entities further acknowledge an obligation to comply with the requirements of Florida's laws when engaging in the operation or delivery of, or receiving payment for, any managed care pharmacy benefit or service in or affecting Florida, and agree that they will do so in the future with respect to any managed care pharmacy benefit operations they conduct in Florida, or reports they make concerning such operations to the State or any other Releasers. Pharmacy benefits and services shall continue to be delivered in the normal course of business pursuant to the terms of any contracts existing between the Centene Entities and the State, including AHCA, as of the Execution Date. The Centene Entities have previously adopted certain business practices and agree to continue such business practices providing full transparency related to the adjudication and payment of all pharmacy benefit claims consistent with the requirements of the contracts between the Centene Entities and the State, including AHCA, and applicable law, guidance and instructions.

6. For the avoidance of doubt, nothing in this Agreement shall be construed or used to prohibit the Centene Entities, or any of them, in any way whatsoever from taking legal or factual positions in litigation or other legal or administrative proceedings or from providing extrajudicial statements made in the context of such litigation or other legal or administrative proceedings.

7. Other than as set forth in this Settlement and Release, which shall be binding upon the Parties as of the Execution Date, the contracts currently existing between the Centene Entities and the State, including AHCA, shall remain in full force and effect.

**C. Settlement of Claims and General Release.** The Parties hereby agree to settle the Released Claims. The State contends that the review was initiated to protect the legitimate interest of the State and other Releasors, and the State and other Releasors agree that settlement on these terms is in the statewide interest. The Centene Entities maintain they have operated in Florida in compliance with all applicable laws and regulations and that the Centene Entities provided the highest quality healthcare and added value to the Medicaid program, but also agree that settlement on these terms is in all Parties' interest. On the Execution Date, Releasors hereby release the Releasees, and shall be deemed to have fully, finally, forever and permanently released, remised, acquitted, held harmless, relinquished and discharged with prejudice all Released Claims, and shall have covenanted not to sue any Releasee with respect to any such Released Claim, and shall be permanently barred and enjoined from instituting, reinstituting, maintaining, commencing or prosecuting any such Released Claim against the Releasees, including any administrative action related to the Released Claims, including mandatory or permissive exclusions from the State's Medicaid program related to the Released Claims, and the releases as set forth herein shall be given full *res judicata* effect. Releasors shall be deemed to have released all Released Claims related to the Covered Conduct, including all claims of any and all state departments, divisions, agencies, bureaus, plans, or programs of the State regardless of whether any such Releasor ever seeks or obtains, by any means, any distribution under this Agreement. Releasors shall be deemed to have released all claims against the Releasees that are or could have been brought by Releasors for the Covered Conduct, including the State's state and federal statutory, regulatory, and/or common law



claims, in law or equity, and by any other person acting or purporting to act in *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer or any other capacity on behalf of any Releasor.

**D. Good Faith Settlement.** To the extent necessary under applicable law to extinguish claims for contribution and/or indemnity against any Releasees for the Released Claims due to a contribution or indemnity claim by a third party in an action brought by the State based on the Covered Conduct, the Releasors further agree: (i) to obtain a determination from a court of competent jurisdiction that this Settlement is a good faith settlement; and/or (ii) reduce any judgment Releasors might recover against any person or entity other than any of the Releasees by release and discharge in an amount, fraction, portion, or percentage necessary under applicable law to bar, eliminate, or satisfy claims against the Releasees for contribution and/or indemnity to the fullest extent permitted by applicable law that arise from, or in any way relate to the Covered Conduct released herein.

**E. Enforcement of the Agreement.** Any Party may bring an action in a Florida State Court in accordance with Paragraph H.3. to enforce the terms of the Agreement (or for a declaratory order construing any such term contained in the Agreement) with respect to disputes, alleged violations or alleged breaches. It is within the Florida Court's discretion to enter either a declaratory or enforcement order and such order is subject to appellate review. The Parties agree that any material violation of the terms of this Agreement will subject the breaching Party to all available remedies allowed by law.

**F. No Admission of Liability.** The Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them, and it shall not be deemed an admission by any Party as to the merits of any claim or defense or any allegation made, or which

could have been made, related to the review. The Centene Entities each deny any wrongdoing and any civil or criminal liability with respect to any review or inquiry by any of the Releasors.

**G. No Other Actions.** The State represents and warrants that, at the time of the execution of this Agreement, the State is not aware of any filed, anticipated or proposed qui tam or other actions against the Centene Entities alleging a violation of Florida law related in any way to the Covered Conduct.

**H. Miscellaneous Provisions.**

1. **Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the Covered Conduct, or of any wrongdoing or liability of Releasees; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Agreement in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

2. **Voluntary Settlement.** This Agreement was negotiated in good faith and at arms-length and the exchange of the Settlement Amount for the release set forth herein is an exchange of reasonably equivalent value.

3. **Resolution of Disputes.** Any disputes between or among the Centene Entities and the State (or their counsel) concerning matters regarding the Agreement shall, if they cannot be resolved by negotiation and agreement in the first instance, be referred to the Florida Courts for resolution. Prior to any referral to the Courts, any dispute must first be raised in a written notice (as defined in Section H.5) and the Parties must engage in good faith negotiations. No filing with the Courts can occur prior to at least 30 days after the presentation of such written notice.

4. **Authorization to Enter Agreement.** The undersigned representatives of the Centene Entities represent and warrant that they are fully authorized to enter into and to execute this Agreement on behalf of the Centene Entities, and the Centene Entities have the power and authority to enter into and perform this Agreement, and the execution and performance of this Agreement has been duly authorized by all requisite corporate or other legal action. The Attorney General, on behalf of the State, represents and warrants that she is expressly authorized by the State and all departments, divisions, agencies, bureaus, plans, and or programs of the State to take all action required or permitted to be taken pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement binding upon all Releasors, including but not limited to AHCA, FL OIR, [and FL DOH](#), [and FL OIG](#).

Commented [KAV3]: Same comment as above.

5. **Notices.** All notices to counsel under this Agreement shall be in writing. Each such notice shall be given either by (i) email; (ii) hand delivery; or (iii) registered or certified mail, return receipt requested, postage pre-paid; and shall be addressed to counsel at their addresses set forth on the signature page hereof.

6. **Tax.** All amounts paid (or actions taken) by Centene pursuant to this Agreement are for restitution or to come into compliance with the law within the meaning of those terms under 26 U.S.C. § 162(f) and Treas. Reg. § 1.162-21. No portion of any amount paid under this

Agreement constitutes a fine, penalty, punitive damages, disgorgement of profits beyond restitution, or an amount paid in settlement of any claim for any of the foregoing.

7. **Non-Appealable and Binding Agreement.** This Agreement shall constitute a final resolution upon the Execution Date. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

8. **Confidentiality.** The terms of this Agreement will remain confidential until such time as the Execution Date. Nothing herein prevents the Parties from disclosing the terms of the Settlement to those necessary in connection with normal business reporting practices and to obtain the necessary authority to execute the Agreement.

9. **Choice of Law.** Any dispute arising from or in connection with the completion and execution of the Agreement shall be governed by Florida law without regard to its choice of law provisions.

10. **No Conflict Intended.** The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. Further, where the context so requires, terms used in the singular in this Agreement shall be deemed to include the plural and vice versa.

11. **No Party Deemed to be the Drafter.** None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

12. **Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by all the Parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any

Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

13. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall have the same force as a fully executed original Agreement. The Parties agree that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

14. **Integrated Agreement.** This Agreement constitutes the entire agreement between the Parties and no representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

***[SIGNATURE PAGES TO FOLLOW]***

**IN WITNESS WHEREOF**, the Releasors have executed this Settlement Agreement and Release as of the dates indicated below.

**THE STATE OF FLORIDA**

Attorney General's Office

By: \_\_\_\_\_ Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Florida Agency for Health Care Administration

By: \_\_\_\_\_ Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Florida Office of Insurance Regulation

By: \_\_\_\_\_ Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Florida Department of Health

By: \_\_\_\_\_

Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Centene Entities have executed this Settlement

Agreement and Release as of the date indicated below.

**CENTENE CORPORATION**, on behalf of itself and each of its subsidiaries, including but not limited to, Sunshine State Health Plan, Inc., Celtic Insurance Company, Centene Management Company, and Envolve Pharmacy Solutions, Inc.:

By: \_\_\_\_\_ Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Christopher A. Koster  
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