

WORKING DRAFT -- 7.14.21
NOT AN EXECUTION VERSION
Confidential Settlement
Communication Without Prejudice

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into this ____ day of July 2021, among Centene Corporation and each of its subsidiaries (“Centene”), including but not limited to, Sunshine State Health Plan, Inc. (“Sunshine”), Centene Management Corporation, (“CMC”), Magellan Health, Inc., including Magellan Complete Care, LLC, (Magellan”), and Envolve Pharmacy Solutions, Inc., (“Envolve”) (collectively referred to as “Centene Entities”), and the Attorney General on behalf of the State of Florida, the Florida Agency for Health Care Administration, and all other state departments and divisions, agencies, bureaus, plans and/or programs of the State of Florida for which the Centene Entities provided any pharmacy benefit or service, or which paid or reimbursed any Centene Entity for providing such a pharmacy benefit or service (hereinafter collectively referred to as “Attorney General,” “State of Florida” or the “State) (the Centene Entities and the State of Florida, collectively referred to as the “Parties” or “Settling Parties”). This Settlement Agreement and Release is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle all potential claims arising from or in any way related to the pharmacy business of the Centene Entities in Florida during the defined time period running from January 1, 2016, to the execution of this Settlement Agreement and Release (the “Settlement”).

WHEREAS, the State has been reviewing the operations of Sunshine and its Pharmacy Benefit Manager, 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 benefit 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, while the State believes that the Centene Entities have provided high quality pharmacy benefit services to the State and are qualified to continue to provide such services, 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 provided by Centene Entities and/or conduct that could have been alleged by the Releasors;

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

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.

- a) “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release, together with any exhibits attached hereto.
- b) “Centene Entities” means Centene Corporation and each of its current and former subsidiaries, including but not limited to, Sunshine State Health Plan Inc., Magellan Health, Inc., Centene Management Corporation, and Envolve Pharmacy Solutions, Inc.
- c) “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 the Effective Date, relating to the operation or delivery of, or payment for, all pharmacy benefit products by any Centene Entity as part of, or in connection with, the provision of Health Care Coverage, including but not limited to: (i) the payment or reimbursement to or from any state departments, divisions, agencies, bureaus, plans, and/or programs for such pharmacy benefits or services, including but not limited to, any alleged mis-allocation or non-allocation of payments; (ii) the adjudication of such pharmacy benefit claims by any Centene Entity; and (iii) the reporting (directly or indirectly) by any Centene Entity to any state department or division, agency, bureau, plan and/or program.
- d) “Effective Date” means the date upon which all of the following have occurred: (i) the Centene Entities have executed this Settlement Agreement and Release; and (ii) the Attorney General has executed the

Settlement Agreement and Release on behalf of the State with the requisite authority under State law necessary to bind all Releasors.

- e) “Execution Date” means the date on which this Agreement is executed by the last party to do so.
- f) “Parties” and “Settling Parties” means the Centene Entities and the State of Florida, the Florida Attorney General and Florida Agency for Health Care Administration.
- g) “Health Care Coverage” means the offering or provision of health insurance or coverage of health care 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 Child Health Insurance Program, Medicare Advantage or policies offered or sold in the individual insurance market.
- h) “Releasees” means (i) Centene Corporation, Meridian, Celtic CMC and Envolve; (ii) all past and present subsidiary and affiliated United States and foreign corporations, companies, or limited liability entities owned, in whole or in part, by any of the Releasees, including RxAdvance (which is now known as NirvanaHealth); (iii) WellCare Health Plans, Inc. (including any past or present WellCare subsidiaries and related companies), to the extent such subsidiaries’ or affiliated companies’ activities related to or supported, directly or indirectly, the provision of pharmacy benefits or services as part of, or in connection with, the provision of Health Care Coverage; and (iv) for each of the foregoing in (i), (ii) and (iii), each of their 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 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 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. As used in this paragraph, “affiliates” or “affiliated” means entities directly or indirectly controlling, controlled by or under common control or ownership with a Releasee.

- i) “Released Claims” means any and all 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 Releasor related to or arising out of in any way the Covered Conduct both known or unknown.
- j) “Releasors” means: (i) the State and the Attorney General, and (ii) any state department or division, agency, plan and/or program by the State 1) for which any Centene Entity provided any pharmacy benefit, or 2) which paid or reimbursed any Centene Entity for providing such a pharmacy benefit, or 3) which could have claims related to the Covered Conduct against any Centene Entity, and on whose behalf the Attorney General shall possess, or obtain, the authority to bind.
- k) “Settlement Amount” means the aggregate total of the installment payments to be made as set forth in Section B. of this Agreement.
- l) “State of Florida” or “State” means the Attorney General on behalf of the State, Florida Agency for Health Care Administration, and all other departments or divisions, agencies, bureaus, plans and/or programs of the State.

B. Settlement Amount and Other Obligations of Settling Parties.

1. Upon execution of this Settlement Agreement and Release, the Settling Parties will take all steps necessary to cause the Effective Date to be reached.

2. Each Party will be responsible for its own costs, expenses, and attorneys' fees.

3. Following the Effective 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 Eleven Dollars and Sixty Four Cents (\$67,048,611.64) ("Settlement Amount") to be made to the Attorney General in trust for the State of Florida. The Settlement Amount shall be paid in two equal installments. The installments shall be paid by wire transfer to an account of the Florida Attorney General's Office in the manner to be directed in writing by the Attorney General pursuant to the Notice provisions of this Agreement. The first installment shall be paid within forty-five (45) days of the Effective 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 Amount shall be fully satisfied and extinguished upon completion of the wire transfer deposit of such installment into the State account as directed by the Attorney General. The Centene Entities shall have no obligation with respect to any allocation or distribution of the Settlement Amount among Releasors or counsel.

4. It is expressly agreed by the Settling Parties that the Settlement Amount to be paid pursuant to this Agreement 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.

5. 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.

6. 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 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 Parties as of the Effective 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, including the provision of such information as is required to permit the State to discern, on a claims level, the exact amount paid to the pharmacy for each pharmaceutical claim.

7. 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.

8. Other than as set forth in this Settlement and Release which shall be binding upon the Parties as of the Effective Date, the contracts currently existing between the parties shall remain in full force and effect.

C. Settlement of Claims and General Release. The Settling 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 Effective Date of the Release, 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, 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 and/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 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 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 within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/2(c), and/or (ii) reduce any judgment Releasors might recover against any person or entity other than any Releasee 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 released herein.

E. Enforcement of the Agreement. Any Party may bring an action in Florida State Court in accordance with Paragraph H.3. to enforce the terms of the Settlement (or for a declaratory order construing any such term) 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.

F. No Admission of Liability. The Settling 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 Settling Party as to the merits of any claim or defense or any allegation made, or which could have been made, in the review. The Centene Entities each deny any wrongdoing and any civil or criminal liability with respect to any review or inquiry by any

Releasor.

G. Termination. This Agreement shall terminate on the date that is sixty (60) days after the Execution Date if the Effective Date shall not have occurred by such date, unless otherwise agreed in writing by the Settling Parties.

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 Settlement Agreement and Release 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 Settlement Agreement and Release 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 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 Settlement Agreement and Release.** 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 Centene Corporation, Sunshine and Envolv, respectively, and the Centene Entities have the power and authority to enter into and perform this Settlement Agreement and Release, and the execution and performance of this Settlement Agreement and Release has been duly authorized by all requisite corporate or other legal action. The Attorney General, on behalf of the State, represents and warrants that he is expressly authorized by the State and all state 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 Settlement Agreement and Release binding upon all Releasors.

5. **Notices.** All notices to counsel under this Agreement shall be in writing. Each such notice shall be given either by (i) e-mail; (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. **Press Statement.** The Centene Entities and the Attorney General shall each issue a press release that positively describes the Settlement.

7. **Tax.** The Settlement Amount delivered in connection with this Settlement shall constitute restitution payments for United States Federal income tax purposes.

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

9. **Confidentiality.** The terms of the Agreement will remain confidential until such time as the Execution Date. Nothing herein prevents the Settling 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.

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

11. **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.

12. **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.

13. **Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by all the Settling 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.

14. **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.

15. **Integrated Agreement.** This Agreement constitutes the entire agreement between the Settling 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.

IN WITNESS WHEREOF, the State of Florida, including but not limited to, the Florida Agency for Health Care Administration and all Releasors, has executed this Settlement Agreement and Release as of the date indicated below.

**THE STATE OF FLORIDA
and the FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION
Attorney General of FLORIDA**

By: _____

Date: _____

Approved as to Form:

Special Counsel for the State of Florida

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., Magellan Health, Inc., Centene Management Corporation, and Envolve Pharmacy Solutions, Inc.:

By: _____

Date: _____

Printed Name: _____

Title: _____

Approved as to Form:

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Counsel for the Centene Entities