

**IN THE CIRCUIT COURT FOR THE
THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY,
FLORIDA – CIRCUIT CIVIL DIVISION**

KELLY PONTILLO, individually, and
on behalf of all similarly situated,

Plaintiff,

v.

FLORIDA HEALTH SCIENCES CENTER, INC.
d/b/a TAMPA GENERAL HOSPITAL,

Defendant.

Case No.: 22-CA-000099

Division: I

**CORRECTED FINAL APPROVAL ORDER AND
DECLARATORY JUDGMENT APPROVING CLASS ACTION
SETTLEMENT AND DISMISSING CLASS ACTION WITH PREJUDICE NUNC PRO
TUNC TO APRIL 6, 2023
(corrected electronic signature stamp)**

WHEREAS, Plaintiff, Kelly Pontillo, individually, and on behalf of all those similarly situated (“**Plaintiff**”), and Defendant, Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital (“**FHSC**”) (Plaintiff and FHSC collectively referred to herein as the “**Parties**”), have entered into a class action settlement agreement dated November 2, 2022, together with related exhibits (collectively, the “**Settlement Agreement**”), to settle this class action; and

WHEREAS, the Court entered an Order dated November 9, 2022, on the Joint Motion for Preliminary Approval of Class Action Settlement Agreement (the “**Preliminary Approval Order**”), preliminarily certifying a class in this Action for settlement purposes; ordering notice to potential class members; providing those persons with an opportunity either to exclude themselves from the Class or to object to the proposed settlement; and scheduling a Fairness Hearing;

WHEREAS, the Court held a Fairness Hearing on April 4, 2023, to determine whether to finally approve the proposed settlement; and

WHEREAS, the Court entered an Order at the Fairness Hearing, approving the settlement of attorneys' fees and costs; and

WHEREAS, the Parties have complied with the Preliminary Approval Order and the Court finds that the Settlement Agreement is fair, adequate, and reasonable, and that it should be finally approved.

NOW THEREFORE, based on the submissions of the Parties and Class Members, any objections, any testimony adduced at the Fairness Hearing, the pleadings on file, and the argument of counsel, the Court hereby finds, and it is hereby **ORDERED, ADJUDGED AND DECREED**, as follows:

1. **Incorporation of Defined Terms.** Except where otherwise noted, all capitalized terms used in this Order shall have the meanings set forth in the Settlement Agreement.

2. **Jurisdiction.** The Court has personal jurisdiction over all Class Members and has subject matter jurisdiction over this Action, including, without limitation, jurisdiction to approve the proposed settlement, to grant final certification of the Class, to settle and release all claims arising out of the transactions alleged in the Action or the Released Claims, and to dismiss this Action on the merits and with prejudice.

3. **Final Class Certification.** The Class that this Court previously certified preliminarily in its Preliminary Approval Order is hereby finally certified for settlement purposes under Florida Rule of Civil Procedure 1.220.

4. **Opt-Outs.** A list of those persons or entities who have timely excluded themselves from the Class (opt-outs), and who therefore are not bound by this Final Approval Order and Declaratory Judgment, is attached hereto as Appendix “A”, which is incorporated herein and made a part hereof for all purposes.

5. **Adequacy of Representation.** The Court finds that Class Counsel and Plaintiff have fully and adequately represented the Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Florida Rule of Civil Procedure 1.220.

6. **Class Notice.** The Court finds that the distribution of the Class Notice and supplemental Class Notice, in accordance with the terms of the Settlement Agreement and this Court’s Preliminary Approval Order, and as explained in the declarations filed at or before the Fairness Hearing:

a. constituted the best practicable notice to Class Members under the circumstances of this Action;

b. was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of this Action, (ii) their right to exclude themselves from the Class and the proposed settlement, (iii) their right to object to any aspect of the proposed settlement (including without limitation final certification of the Class, the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of the Class’s representation by Plaintiff or Class Counsel, the award of attorneys’ fees and expenses to Class Counsel and/or the award of an incentive payment to the named Plaintiff), (iv) their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) if they did not exclude themselves

from the Class, and (v) the binding effect of the orders and Final Approval Order and Declaratory Judgment in this Action, whether favorable or unfavorable, on all persons or entities who do not request exclusion from the Class;

c. was reasonable and constituted due, adequate and sufficient notice to all persons or entities entitled to be provided with notice; and

d. fully satisfied the requirements of the United States Constitution, the Florida Constitution, the Florida Rules of Civil Procedure, the Rules of this Court, and any other applicable rules or law.

7. **Final Settlement Approval.** The terms and provisions of the Settlement Agreement, including all amendments and exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of Plaintiff and the Class Members, and in full compliance with all applicable requirements of the Florida Rules of Civil Procedure, and any other applicable rules or laws. The Parties and Class Members are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions. Any and all objections to the Settlement Agreement have been considered by the Court and are hereby overruled.

8. **Binding Effect.** The terms of the Settlement Agreement and of this Final Approval Order and Declaratory Judgment shall be forever binding on Plaintiffs and all other Class Members, as well as their heirs, representatives, executors and administrators, successors and assigns, and those terms shall have res judicata and full preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons or entities, to the extent those claims, lawsuits or other proceedings involve matters that were or could have

been raised in this Action or are otherwise encompassed by the Release described in the next paragraph of this Final Approval Order and Declaratory Judgment.

9. **Release.** Upon the Effective Date, Plaintiff and all Class Members who have not timely opted out of the Class (as reflected in paragraph 4. above), together with their respective heirs, representatives, executors and administrators, successors, assigns or any other persons or entities claiming through or on behalf of Plaintiff or any such Class Members, shall be deemed to have, and by operation of this Final Approval Order and Declaratory Judgment shall have fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties.

10. **Declaratory Relief.** A hospital rendering treatment to a person for a bodily injury covered by PIP insurance “may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered.” Section 627.736(5)(a), Fla. Stat. As stated in Section 627.736(5)(a)1, Fla. Stat., the insurer “may limit reimbursement to 80 percent of the following schedule of maximum charges:

b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital’s usual and customary charges.

...

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

...

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.”

Fla. Stat. § 627.736(5)(a)1.

11. However, if an insurer limits payments as authorized by Fla. Stat. § 627.736(5)(a)1, the hospital “may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured’s personal injury protection coverage due to the coinsurance amount or maximum policy limits.” Fla. Stat. § 627.736(5)(a)4.

12. Both Plaintiff and FHSC are in doubt as to FHSC’s rights to bill for its services and, therefore, a present ascertained controversy exists.

13. A bona fide, actual, present, practical need for the requested declaration of rights exists as the Parties seek to resolve the conflict as to how FHSC may bill prospective class members for its services and care.

14. The Parties have an actual, present, interest in the matter subject to this Final Approval Order and Declaratory Judgment.

15. The requested declaration does not merely seek the giving of legal advice.

16. Wherefore, Declaratory Judgment is **GRANTED** as set forth in paragraphs 17 through 30 of this Final Approval Order and Declaratory Judgment.

17. The rights of FHSC to bill for its services are dependent upon the application of section 627.736, Florida Statutes, entitled “Required personal injury protection benefits; exclusions; priority; claims.” If an insurer limits payments as authorized by section 627.736(5)(a)1, Florida Statutes, FHSC shall not bill or attempt to collect from a patient any amount in excess of the maximum reimbursement limits set forth in section 627.736(5)(a)1, Florida Statutes, except for amounts not covered by the insured’s PIP coverage due to the coinsurance amount or maximum policy limits. All amounts not covered by the PIP insurer’s payment or the patient’s/insured’s coinsurance amount may be billed to the Prospective Relief Class Member at FHSC’s billed or full rate without regard to the statutory reduction under section 627.736(5)(a)1, Florida Statutes.

With regard to any deductible applied by a PIP insurer on FHSC’s bill, such deductible is applied prior to the PIP insurer’s obligation to pay FHSC’s bill and is therefore not an amount covered by the PIP insurer’s payment or policy. A PIP insured patient is solely obligated to pay the deductible to FHSC. *See Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr.*, 260 So.3d 219, 221 (Fla. 2018). Therefore, the PIP deductible is applied prior to any statutory reduction to FHSC’s Hospital Charges pursuant to section 627.736(5)(a)1, Florida Statutes.

**Balance Billing of Emergency Services and Care
(Fla. Stat. § 627.736(5)(a)1.b.)**

A. Hospital Charges for Plaintiff Kelly Pontillo and PIP Coverage

18. By way of example, Plaintiff Kelly Pontillo’s hospital charges for treatment at FHSC’s emergency department was partially paid by her PIP insurance as follows:

| Line | Date of Service | Rev Code | CPT/ HCPCS | MOD/TS | Units | Submitted Amount | Approved Amount | Reason Codes |
|----------------------------------|-------------------------|----------|---------------|--------|-------|---------------------|--------------------|--------------|
| 1 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$585.00 | \$438.75 | SF149 |
| 2 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$37.00 | \$27.75 | SF149 |
| 3 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$216.00 | \$162.00 | SF149 |
| 4 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$1,416.00 | \$1,062.00 | SF149 |
| 5 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$869.00 | \$651.75 | SF149 |
| 6 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$0.01 | \$0.01 | SF149 |
| 7 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$3,705.00 | \$2,778.75 | SF149 |
| 8 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$0.01 | \$0.01 | SF149 |
| 9 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$4,393.00 | \$3,294.75 | SF149 |
| 10 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$2,190.00 | \$1,642.50 | SF149 |
| 11 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$214.00 | \$160.50 | SF149 |
| 12 | 04-28-2021 - 04-28-2021 | | | | 1.00 | \$428.00 | \$321.00 | SF149 |
| Total Submitted Charges: | | | | | | \$14,053.02 | | |
| Total Approved Amount: | | | | | | \$10,539.77 | | |
| Amount Not Payable: | | | | | | \$10,325.63 | | |
| Deductible: | | | | | | \$0.00 | | |
| CoPay: | | | | | | \$0.00 | | |
| Apportionment / Pro Rata: | | | | | | \$0.00 | | |
| Offset: | | | | | | \$0.00 | | |
| Previous Paid Amount: | | | | | | \$0.00 | | |
| Paid Amount: | | | | | | \$214.14 | | |

19. FHSC provided \$14,053.02 of emergency services and care to Kelly Pontillo. FHSC sent the PIP insurer a bill for \$14,053.02 (the “Hospital Charges”). The PIP insurer, pursuant to Fla. Stat. § 627.736(5)(a)1.b., reduced the \$14,053.02 bill by 25%, leaving a bill for

75% of the Hospital Charges, that is \$10,539.77 (the “**PIP Allowed Amount**”). Pursuant to Fla. Stat. § 627.736(5)(a)1, the PIP insurer was obligated to pay FHSC 80% of the PIP Allowed Amount (80% of \$10,539.77 = \$8,431.82). However, only \$214.14 in PIP policy benefits remained for Kelly Pontillo. Accordingly, the PIP insurer only paid FHSC \$214.14. The PIP insurer did not apply a deductible to Kelly Pontillo’s FHSC bill.

B. Application of Balance Billing Formula for Emergency Services and Care

20. To determine how much a patient, like Kelly Pontillo, owes FHSC pursuant to Fla. Stat. § 627.736(5)(a)4, FHSC shall calculate its “**Balanced Bill**” as follows:¹

| | | |
|---|--------------------|--|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | \$14,053.02 | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction² |
| | \$10,539.77 | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |
| - | \$ 214.14 | [Step 6] PIP Insurer’s Payment³ |
| - | \$ 2,107.95 | [Step 7] PIP Coinsurance Amount |
| | \$ 8,217.68 | [Step 8] PIP Allowed Amount Remaining |
| ÷ | .75 | [Step 9] Reversal of Statutory PIP Reduction |
| | \$10,956.91 | [Step 10] Restored Balance |
| + | \$ 2,107.95 | [Step 11] PIP Coinsurance Amount |
| + | \$ 0.00 | [Step 12] Applied PIP Deductible |
| | \$13,064.86 | [Step 13] Balanced Bill owed by Patient/Insured |

¹ With the exception noted herein, all amounts are rounded to the nearest penny. Tenths of a penny from 0.001 to 0.004 are rounded down (e.g., \$100.124 is rounded down to \$100.12). Tenths of a penny from 0.005 to 0.009 are rounded up (e.g., \$100.127 is rounded up to \$100.13). However, with respect to Step 10 in the balance billing formula for inpatient or outpatient services, the “Restoration Number” used to restore the balance of hospital charges after PIP benefits exhaust must be rounded to six decimals, not two. For example, 0.7456638 would be rounded up to 0.745664, and 0.7456631 would be rounded down to 0.745663. These rounding principles apply throughout this Final Approval Order and Declaratory Judgment and to the formulas contained herein.

² See Fla. Stat. § 627.736(5)(a)1.b.

³ The PIP Insurer’s Payment is 80% of the PIP Allowed Amount unless PIP benefits exhaust before this 80% payment is satisfied in full.

21. FHSC may apply the same interpretation of Fla. Stat. § 627.736(5)(a)1.b. and (5)(a)4 to the calculation of the balances owed—that is, the Balanced Bill—by all Prospective Relief Class Members.

C. Explanation of Balance Billing Formula for Emergency Services and Care

22. Explained another way, calculating the appropriate Balanced Bill requires this multi-step process to be followed:

- **Step 1:** FHSC calculates its “**Hospital Charges**” without regard to Fla. Stat. § 627.736 (the “**PIP Statute**”). In this case, FHSC charged \$14,053.02 in Hospital Charges for emergency services and care provided to Kelly Pontillo. FHSC then submits these Hospital Charges to the PIP insurer for processing of payment.

\$14,053.02 [Step 1] Hospital Charges

- **Step 2:** Once FHSC’s bill is received, the PIP insurer may apply a deductible to the Hospital Charges (the “**Applied PIP Deductible**”), which is not covered by the PIP insurer and is owed solely by the patient/insured. No PIP statutory reduction or coinsurance is calculated on the Applied PIP Deductible.

\$14,053.02 [Step 1] Hospital Charges
- \$ 0.00 [Step 2] Applied PIP Deductible

- **Step 3:** The Applied PIP Deductible is subtracted from the Hospital Charges to create the hospital charges post PIP deductible (“**Hospital Charges Post PIP Deductible**”). Here, Kelly Pontillo’s PIP insurer did not apply a deductible to the Hospital Charges. Therefore, \$0.00 is subtracted from the Hospital Charges (\$14,053.02) resulting in Hospital Charges Post PIP Deductible of \$14,053.02.

\$14,053.02 [Step 1] Hospital Charges
- \$ 0.00 [Step 2] Applied PIP Deductible

\$14,053.02 [Step 3] Hospital Charges Post PIP Deductible

• **Step 4:** The appropriate statutory PIP reduction (“**Statutory PIP Reduction**”) is calculated pursuant to the relevant subsection of the PIP Statute. In the case of Kelly Pontillo, her Statutory PIP Reduction is calculated based upon Fla. Stat. § 627.736(5)(a)1.b. for emergency services and care, which reduces the Hospital Charges to “75 percent of the hospital’s usual and customary charges[.]” Within this formula, 75% is represented by 0.75.

| | | |
|---|--------------------|--|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | \$14,053.02 | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction |

• **Step 5:** The PIP allowed amount (“**PIP Allowed Amount**”) is calculated by applying the Statutory PIP Reduction to the Hospital Charges Post PIP Deductible. This is accomplished by multiplying the Hospital Charges Post PIP Deductible by 75% (or 0.75). Here, seventy-five percent (75%) of \$14,053.02 equals \$10,539.77.

| | | |
|---|--------------------|--|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | \$14,053.02 | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction |
| | \$10,539.77 | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |

• **Step 6:** The PIP insurer then makes a payment of PIP benefits (the “**PIP Insurer’s Payment**”) on the PIP Allowed Amount. In instances applicable to this settlement, the PIP Insurer’s Payment is less than the PIP Allowed Amount. In this case, Kelly Pontillo only had \$214.14 of PIP coverage remaining at the time the PIP insurer made a payment on the Hospital Charges. Thus, the PIP Insurer’s Payment was \$214.14 and not the full PIP Allowed Amount of \$10,539.77.

| | | |
|---|--------------------|--|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |

| | | |
|---|--------------------|---|
| | \$14,053.02 | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction |
| | <u>\$10,539.77</u> | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |
| - | \$ 214.14 | [Step 6] PIP Insurer's Payment |

- **Step 7:** The PIP coinsurance amount (“**PIP Coinsurance Amount**”) is typically 20% of the PIP Allowed Amount. Here, the PIP Coinsurance Amount is \$2,107.95 ($\$10,539.77 \times 0.20 = \$2,107.95$).

| | | |
|---|--------------------|---|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | <u>\$14,053.02</u> | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction |
| | <u>\$10,539.77</u> | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |
| - | \$ 214.14 | [Step 6] PIP Insurer's Payment |
| - | <u>\$ 2,107.95</u> | [Step 7] PIP Coinsurance Amount |

- **Step 8:** The amount remaining following the PIP Insurer's Payment and the PIP Coinsurance Amount (the “**PIP Allowed Amount Remaining**”) is then calculated. This amount is calculated by subtracting the PIP Insurer's Payment (\$214.14) and the PIP Coinsurance Amount (\$2,107.95) from the PIP Allowed Amount (\$10,539.77). Here, the PIP Allowed Amount Remaining is \$8,217.68 ($\$10,539.77 - \$214.14 - \$2,107.95 = \$8,217.68$).

| | | |
|---|--------------------|---|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | <u>\$14,053.02</u> | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction |
| | <u>\$10,539.77</u> | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |
| - | \$ 214.14 | [Step 6] PIP Insurer's Payment |
| - | <u>\$ 2,107.95</u> | [Step 7] PIP Coinsurance Amount |
| | \$ 8,217.68 | [Step 8] PIP Allowed Amount Remaining |

- Step 9:** Under the settlement and pursuant to Fla. Stat. § 627.736(5)(a)1 & 4, all amounts not covered by the PIP Insurer’s Payment or the Coinsurance Amount may be billed to the Prospective Relief Class Member at FHSC’s billed or full rate without regard to the statutory reduction under section 627.736(5)(a)1, Florida Statutes. Accordingly, after PIP benefits exhaust FHSC must reverse the Statutory PIP Reduction for the remaining Hospital Charges Post PIP Deductible. Where emergency services and care have been provided to a patient and Fla. Stat. § 627.736(5)(a)1.b. has lowered the Hospital Charges to “75 percent of the hospital’s usual and customary charges,” FHSC must reverse this 25% reduction and restore the remaining Hospital Charges Post PIP Deductible giving proper credit for the PIP Insurer’s Payment and any Coinsurance Amount. The denominator used to reverse the Statutory PIP Reduction is 0.75 because the Hospital Charges Post PIP Deductible were reduced to 75% of FHSC’s usual and customary charges for emergency services and care.

| | | |
|---|-------------|---|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | \$14,053.02 | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction |
| | \$10,539.77 | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |
| - | \$ 214.14 | [Step 6] PIP Insurer’s Payment |
| - | \$ 2,107.95 | [Step 7] PIP Coinsurance Amount |
| | \$ 8,217.68 | [Step 8] PIP Allowed Amount Remaining |
| ÷ | .75 | [Step 9] Reversal of Statutory PIP Reduction |

- Step 10:** If the PIP Allowed Amount is not satisfied by the PIP Insurer’s Payment and PIP Coinsurance Amount, the Statutory PIP Reduction must be removed from the PIP Allowed Amount Remaining to restore the balance of Hospital Charges Post PIP Deductible (the “**Restored Balance**”). This is accomplished by dividing the PIP Allowed Amount Remaining by 0.75 (or 75%), thereby resulting in the following sum: $\$8,217.68 \div 0.75 = \$10,956.91$.

\$14,053.02 [Step 1] Hospital Charges

| | | |
|---|-------------|---|
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | \$14,053.02 | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction |
| | \$10,539.77 | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |
| - | \$ 214.14 | [Step 6] PIP Insurer's Payment |
| - | \$ 2,107.95 | [Step 7] PIP Coinsurance Amount |
| | \$ 8,217.68 | [Step 8] PIP Allowed Amount Remaining |
| ÷ | .75 | [Step 9] Reversal of Statutory PIP Reduction |
| | \$10,956.91 | [Step 10] Restored Balance |

- **Step 11:** Any unpaid PIP Coinsurance Amount is added back in. This amount for

Kelly Pontillo is \$2,107.95.

| | | |
|---|-------------|---|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | \$14,053.02 | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction |
| | \$10,539.77 | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |
| - | \$ 214.14 | [Step 6] PIP Insurer's Payment |
| - | \$ 2,107.95 | [Step 7] PIP Coinsurance Amount |
| | \$ 8,217.68 | [Step 8] PIP Allowed Amount Remaining |
| ÷ | .75 | [Step 9] Reversal of Statutory PIP Reduction |
| | \$10,956.91 | [Step 10] Restored Balance |
| + | \$ 2,107.95 | [Step 11] PIP Coinsurance Amount |

- **Step 12:** The Applied PIP Deductible is then added back in. In Kelly Pontillo's

case, it is \$0.00.

| | | |
|---|-------------|---|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | \$14,053.02 | [Step 3] Hospital Charges Post PIP Deductible |
| x | .75 | [Step 4] Statutory PIP Reduction |
| | \$10,539.77 | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |
| - | \$ 214.14 | [Step 6] PIP Insurer's Payment |
| - | \$ 2,107.95 | [Step 7] PIP Coinsurance Amount |
| | \$ 8,217.68 | [Step 8] PIP Allowed Amount Remaining |
| ÷ | .75 | [Step 9] Reversal of Statutory PIP Reduction |
| | \$10,956.91 | [Step 10] Restored Balance |
| + | \$ 2,107.95 | [Step 11] PIP Coinsurance Amount |
| + | \$ 0.00 | [Step 12] Applied PIP Deductible |

- **Step 13:** The Balanced Bill owed is finally calculated by adding the Restored

Balance (\$10,956.91) to the PIP Coinsurance Amount (\$2,107.95) and the Applied PIP Deductible

(\$0). Here, the Balanced Bill is \$13,064.86 (\$10,956.91 + \$2,107.95 + \$0 = \$13,064.86).

| | | |
|---|--------------------|---|
| | \$14,053.02 | [Step 1] Hospital Charges |
| - | \$ 0.00 | [Step 2] Applied PIP Deductible |
| | <u>\$14,053.02</u> | [Step 3] Hospital Charges Post PIP Deductible |
| x | <u>.75</u> | [Step 4] Statutory PIP Reduction |
| | \$10,539.77 | [Step 5] PIP Allowed Amount (following Statutory PIP Reduction) |
| - | \$ 214.14 | [Step 6] PIP Insurer's Payment |
| - | <u>\$ 2,107.95</u> | [Step 7] PIP Coinsurance Amount |
| | \$ 8,217.68 | [Step 8] PIP Allowed Amount Remaining |
| ÷ | <u>.75</u> | [Step 9] Reversal of Statutory PIP Reduction |
| | \$10,956.91 | [Step 10] Restored Balance |
| + | \$ 2,107.95 | [Step 11] PIP Coinsurance Amount |
| + | <u>\$ 0.00</u> | [Step 12] Applied PIP Deductible |
| | \$13,064.86 | [Step 13] Balanced Bill owed by Patient/Insured |

- **Conclusion:** FHSC may Balance Bill Kelly Pontillo up to \$13,064.86 pursuant to section 627.736(5)(a)4, Florida Statutes. As noted, FHSC may apply the same interpretation of Fla. Stat. § 627.736(5)(a)1.b. and (5)(a)4, and this formula, to calculate the Balanced Bill owed by all Prospective Relief Class Members who receive emergency services and care from FHSC and lack adequate PIP coverage to satisfy 80% of the PIP Allowed Amount under Fla. Stat. § 627.736(5)(a)1.b.

D. Balance Bill Formula to be Applied in Future Cases – Emergency Services and Care

23. As described above, FHSC shall apply the following formula in calculating the amount it may balance bill patients treated in the emergency department under Fla. Stat. § 627.736(5)(a)1.b.:

Hospital Charges – Applied PIP Deductible = **Hospital Charges Post PIP Deductible**

Hospital Charges Post PIP Deductible x Statutory PIP Reduction = **PIP Allowed Amount**

PIP Allowed Amount – PIP Insurer's Payment – PIP Coinsurance Amount = **PIP Allowed Amount Remaining**

PIP Allowed Amount Remaining ÷ Reversal of Statutory PIP Reduction = **Restored Balance**

Restored Balance + PIP Coinsurance Amount + Applied PIP Deductible = **Balanced Bill**

owed by Patient/Insured.

**Balance Billing of Inpatient Services and Outpatient Services
(Fla. Stat. § 627.736(5)(a)1.d. & e.)**

A. Application of Balance Billing Formula for Inpatient and Outpatient Services

24. For hospital inpatient and outpatient services (that is, services other than emergency services), Fla. Stat. § 627.736(5)(a)1.d. & e. entitle a PIP insurer to reduce its payment to two hundred percent (200%) of the Medicare Part A prospective payment. For inpatient and outpatient services provided under Fla. Stat. § 627.736(5)(a)1.d. & e., the PIP statute sets hospital reimbursement rates based upon the Medicare Part A fee schedules and the Diagnostic-related Group (DRG) reimbursement rates, irrespective of whether the patient is a Medicare beneficiary. If FHSC provides inpatient or outpatient services to a patient with PIP insurance, then the PIP insurer will limit its payment to double (or 200%) the rate that Medicare Part A would pay for those services.

25. As an example, if FHSC provides \$21,000 of inpatient services to a patient with PIP insurance, and Medicare Part A would reimburse FHSC \$2,500 for those inpatient services, then the PIP insurer would be entitled to limit its payment to FHSC to \$5,000 (the “PIP Allowed Amount”). If the PIP insurer’s payment fails to cover 80% of the PIP Allowed Amount, FHSC is entitled to balance bill the remaining amount to the patient. However, this Balanced Bill would not be the remainder of the PIP Allowed Amount after the partial payment under PIP. Rather, FHSC would be allowed to reverse the statutory PIP reduction on the 80% portion of the PIP Allowed Amount remaining and restore the balance to FHSC’s original billed or full rate without regard to the statutory reduction under Fla. Stat. § 627.736(5)(a)1. All amounts not covered by the PIP insurer’s payment may be billed to the Prospective Relief Class Member at FHSC’s billed

or full rate without regard to the statutory reduction under section 627.736(5)(a)1, Florida Statutes.

26. With regards to any PIP deductible required by a PIP insurer, such deductible is applied prior to the PIP insurer’s payment. Therefore, the PIP deductible is applied before any statutory reduction to the Hospital Charges under section 627.736(5)(a)1.d. & e., Florida Statutes. *See Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr.*, 260 So.3d 219, 221 (Fla. 2018); *see also Blum v. Progressive Select Ins. Co.*, Case No. SC18-502, 2022 WL 190654, at *1 (Fla. Jan. 21, 2022) (quashing and remanding case to apply PIP deductible for non-emergency services in light of the *Progressive* decision).

27. An example illustrates the proper balance billing procedure. Assuming \$21,000 in Hospital Charges for inpatient or outpatient services, a \$1,000 PIP deductible, and a \$1,000 payment from the PIP insurer, FHSC would be able to calculate the Balanced Bill owed by the patient/insured as follows:

| | | |
|---|-----------------|--|
| | \$21,000 | [Step 1] Hospital Charges |
| - | \$ 1,000 | [Step 2] Applied PIP Deductible |
| | \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |
| ↓ | | Reduction Using Medicare Part A Rate |
| | \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x | 200% | [Step 5] Increase in Medicare Part A Rate⁴ |
| | \$ 5,000 | [Step 6] PIP Allowed Amount |
| - | \$ 1,000 | [Step 7] PIP Insurer’s Payment |
| - | \$ 1,000 | [Step 8] PIP Coinsurance Amount |
| | \$ 3,000 | [Step 9] PIP Allowed Amount Remaining |
| ÷ | .25 | [Step 10] Restoration Number (Reversing Statutory PIP Reduction)⁵ |

⁴ Fla. Stat. § 627.736(5)(a)1.d. & e.

⁵ To reverse the statutory PIP reduction, FHSC must determine the percentage of Hospital Charges Post PIP Deductible that the PIP Allowed Amount represents. This number is used to reverse the statutory PIP reduction after PIP benefits exhaust (the “**Restoration Number**”). The Restoration Number will vary in every case because the difference between the Hospital Charges Post PIP Deductible and the PIP Allowed Amount will be different in every case. However, this figure can be readily calculated. Determining the Restoration Number is the key to restoration of the Hospital Charges Post PIP Deductible after the

| | | |
|---|-----------------|--|
| | \$12,000 | [Step 11] Restored Balance |
| + | \$ 1,000 | [Step 12] PIP Coinsurance Amount |
| + | \$ 1,000 | [Step 13] Applied PIP Deductible |
| | \$14,000 | [Step 14] Balanced Bill owed by Patient/Insured |

28. FHSC may apply the same interpretation of Fla. Stat. § 627.736(5)(a)1.d. & e. and (5)(a)4 to the calculation of the balances owed—that is, the Balanced Bill—by all Prospective Relief Class Members.

B. Explanation of Balance Billing Formula for Inpatient and Outpatient Services

29. Explained another way, calculating the appropriate Balanced Bill requires this multi-step process to be followed:

- **Step 1:** FHSC calculates its Hospital Charges without regard to the PIP Statute. In this hypothetical, FHSC charged \$21,000 for inpatient or outpatient services provided to a patient (the “**Hospital Charges**”). FHSC then submits these Hospital Charges to the PIP insurer for processing of payment.

\$21,000 **[Step 1] Hospital Charges**

- **Step 2:** The PIP insurer may apply a deductible to the Hospital Charges (the “**Applied PIP Deductible**”), which is not covered by the PIP insurer and is owed solely by the

exhaustion of PIP benefits, while still giving proper credit to the statutory reduction applied before the PIP Insurer’s Payment and the patient’s PIP Coinsurance Amount. For Step 10, the following equation must be followed: *PIP Allowed Amount ÷ Hospital Charges Post PIP Deductible = Restoration Number*. In the above example, \$5,000 (PIP Allowed Amount) ÷ \$20,000 (Hospital Charges Post PIP Deductible) = 0.25 (Restoration Number). The Restoration Number is rounded to the nearest cent. Therefore, to restore the balance of Hospital Charges Post PIP Deductible after the exhaustion of PIP benefits, the Restoration Number must be applied to the PIP Allowed Amount Remaining. For calculation purposes, the following equation must be applied: *\$3,000 (PIP Allowed Amount Remaining) ÷ 0.25 (Restoration Number) = \$12,000 (Restored Balance)*. As noted above, because the PIP Allowed Amount Remaining in each case will represent a different percentage of the Hospital Charges Post PIP Deductible reduced pursuant to the PIP statute, the Restoration Number will vary by case. For example, if the PIP Allowed Amount Remaining had been 40% of the Hospital Charges Post PIP Deductible, then that amount (\$3,000) would be divided by 0.40, resulting in the following calculation: $\$3,000 \div 0.40 = \$7,500$.

insured/patient. Here, this hypothetical bill has a \$1,000 deductible.

| | |
|------------|---------------------------------|
| \$21,000 | [Step 1] Hospital Charges |
| - \$ 1,000 | [Step 2] Applied PIP Deductible |
| \$ 20,000 | |

- **Step 3:** The amount of the Applied PIP Deductible (\$1,000) is subtracted from the Hospital Charges (\$21,000) to calculate the amount of Hospital Charges remaining after application of the Applied PIP Deductible (the “Hospital Charges Post PIP Deductible”). Here, \$21,000 - \$1,000.00 = \$20,000.

| | |
|------------|---|
| \$21,000 | [Step 1] Hospital Charges |
| - \$ 1,000 | [Step 2] Applied PIP Deductible |
| \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |

- **Step 4:** The Hospital Charges Post PIP Deductible are reduced to the amount collectible under Medicare Part A. In this example, the Medicare Part A rate is \$2,500 for the inpatient/outpatient services FHSC provided to the patient.

| | |
|------------|---|
| \$21,000 | [Step 1] Hospital Charges |
| - \$ 1,000 | [Step 2] Applied PIP Deductible |
| \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |
| | <i>Reduction Using Medicare Part A Rate</i> |
| \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |

- **Step 5:** Pursuant to Fla. Stat. § 627.736(5)(a)1.d. & e., the PIP insurer must increase the amount collectible to 200% of the Medicare Part A Rate.

| | |
|------------|---|
| \$21,000 | [Step 1] Hospital Charges |
| - \$ 1,000 | [Step 2] Applied PIP Deductible |
| \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |
| | <i>Reduction Using Medicare Part A Rate</i> |
| \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x 200% | [Step 5] Increase in Medicare Part A Rate |

- **Step 6:** The (“PIP Allowed Amount”) is calculated by multiplying the amount collectible under Medicare Part A (\$2,500) by 200% under Fla. Stat. § 627.736(5)(a)1.d. & e.

Accordingly, the PIP Allowed Amount is $\$2,500 \times 2$ (200%) = \$5,000.

| | | |
|---|-----------------|---|
| | \$21,000 | [Step 1] Hospital Charges |
| - | <u>\$ 1,000</u> | [Step 2] Applied PIP Deductible |
| | \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |
| | | <i>Reduction Using Medicare Part A Rate</i> |
| | \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x | <u>200%</u> | [Step 5] Increase in Medicare Part A Rate |
| | \$ 5,000 | [Step 6] PIP Allowed Amount |

- **Step 7:** The PIP insurer then makes a payment of PIP benefits (the “**PIP Insurer’s Payment**”) on the PIP Allowed Amount. In instances where this formula is applicable, the PIP Insurer’s Payment is less than the PIP Allowed Amount. For instance, if the patient only has \$1,000 in PIP coverage remaining, the PIP Insurer’s Payment will be \$1,000 and not the full PIP Allowed Amount of \$5,000.

| | | |
|---|-----------------|---|
| | \$21,000 | [Step 1] Hospital Charges |
| - | <u>\$ 1,000</u> | [Step 2] Applied PIP Deductible |
| | \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |
| | | <i>Reduction Using Medicare Part A Rate</i> |
| | \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x | <u>200%</u> | [Step 5] Increase in Medicare Part A Rate |
| | \$ 5,000 | [Step 6] PIP Allowed Amount |
| - | \$ 1,000 | [Step 7] PIP Insurer’s Payment |

- **Step 8:** The (“**PIP Coinsurance Amount**”) is typically 20% of the PIP Allowed Amount. Here, the PIP Allowed Amount is \$5,000. Therefore, the PIP Allowed Amount must be multiplied by 0.20 to determine the PIP Coinsurance Amount. This results in the following equation: $\$5,000 \times 0.20 = \$1,000$.

| | | |
|---|-----------------|---|
| | \$21,000 | [Step 1] Hospital Charges |
| - | <u>\$ 1,000</u> | [Step 2] Applied PIP Deductible |
| | \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |
| | | <i>Reduction Using Medicare Part A Rate</i> |
| | \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |

| | | |
|---|-----------------|---|
| x | <u>200%</u> | [Step 5] Increase in Medicare Part A Rate |
| | \$ 5,000 | [Step 6] PIP Allowed Amount |
| - | \$ 1,000 | [Step 7] PIP Insurer's Payment |
| - | <u>\$ 1,000</u> | [Step 8] PIP Coinsurance Amount |

- **Step 9:** The (“**PIP Allowed Amount Remaining**”) is then calculated. This amount is calculated by subtracting the PIP Insurer’s Payment (\$1,000) and the PIP Coinsurance Amount (\$1,000) from the PIP Allowed Amount (\$5,000). Here, the Allowed Amount Remaining is \$3,000 (\$5,000 - \$1,000 - \$1,000 = \$3,000).

| | | |
|---|-----------------|---|
| | \$21,000 | [Step 1] Hospital Charges |
| - | <u>\$ 1,000</u> | [Step 2] Applied PIP Deductible |
| | \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |
| | | <i>Reduction Using Medicare Part A Rate</i> |
| | \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x | <u>200%</u> | [Step 5] Increase in Medicare Part A Rate |
| | \$ 5,000 | [Step 6] PIP Allowed Amount |
| - | \$ 1,000 | [Step 7] PIP Insurer's Payment |
| - | <u>\$ 1,000</u> | [Step 8] PIP Coinsurance Amount |
| | \$ 3,000 | [Step 9] PIP Allowed Amount Remaining |

- **Step 10:** Under the settlement and pursuant to Fla. Stat. § 627.736(5)(a)1 & 4, all amounts not covered by the PIP Insurer’s Payment, or the Coinsurance Amount may be billed to the Prospective Relief Class Member at FHSC’s billed or full rate without regard to the statutory reduction under Fla. Stat. § 627.736(5)(a)1.d. & e. PIP’s statutory fee reduction must be reversed on the Allowed Amount Remaining to restore FHSC’s Hospital Charges Post PIP Deductible after the exhaustion of PIP benefits, giving proper credit for the PIP Insurer’s Payment and the Coinsurance Amount. This requires application of a formula to determine the denominator used to reverse the statutory PIP reduction on the Allowed Amount Remaining (the “**Restoration Number**”).

- (a) Here, the Allowed Amount Remaining is \$3,000. PIP benefits have

exhausted at this point. The PIP statutory reduction, therefore, must be reversed on this remaining \$3,000 to determine the amount which FHSC may balance bill the patient.

○ (b) FHSC may reverse PIP’s statutory fee reduction on the Allowed Amount Remaining by determining the Restoration Number, that is, the percentage that the original PIP Allowed Amount (\$5,000) represents in relation to the Hospital Charges Post PIP Deductible (\$20,000). By determining the percentage reduction from the Hospital Charges Post PIP Deductible to the PIP Allowed Amount, FHSC can reverse PIP’s statutory reduction by applying that same percentage—in reverse—to the PIP Allowed Amount Remaining.

○ (c) Therefore, to determine the Restoration Number the following equation must be followed: *PIP Allowed Amount ÷ Hospital Charges Post PIP Deductible = Restoration Number*. Here, \$5,000 (PIP Allowed Amount) ÷ \$20,000 (Hospital Charges Post PIP Deductible) = 0.25. Accordingly, the Restoration Number in this example is 0.25.⁶

| | |
|-------------------|--|
| \$21,000 | [Step 1] Hospital Charges |
| - \$ 1,000 | [Step 2] Applied PIP Deductible |
| <u>\$20,000</u> | [Step 3] Hospital Charges Post PIP Deductible <i>Reduction Using Medicare Part A Rate</i> |
| \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x <u>200%</u> | [Step 5] Increase in Medicare Part A Rate |
| \$ 5,000 | [Step 6] PIP Allowed Amount |
| - \$ 1,000 | [Step 7] PIP Insurer’s Payment |
| - <u>\$ 1,000</u> | [Step 8] PIP Coinsurance Amount |
| \$ 3,000 | [Step 9] PIP Allowed Amount Remaining |
| <u>÷ .25</u> | [Step 10] Restoration Number (Reversing Statutory PIP Reduction) |

- **Step 11:** To achieve reversal of the PIP statutory fee reduction, FHSC must apply the Restoration Number to the PIP Allowed Amount Remaining. Essentially, by dividing the PIP Allowed Amount Remaining by the Restoration Number, FHSC can calculate the “**Restored Balance.**” In this example, the PIP Allowed Amount Remaining is \$3,000 and the Restoration

⁶ To determine the percentage of Hospital Charges Post PIP Deductible that the PIP Allowed Amount represents, the sum of this equation—0.25—is multiplied by 100, which equals 25% (0.25 x 100 = 25%).

Number designed to remove the PIP statutory fee reduction from that \$3,000 is 0.25. FHSC, therefore, can reverse PIP's statutory fee reduction using the following equation: *PIP Allowed Amount Remaining* ÷ *Restoration Number* = *Restored Balance*. Putting all of the above together, \$3,000 (PIP Allowed Amount Remaining) ÷ 0.25 (Restoration Number) = \$12,000 (Restored Balance).

| | |
|-----------------|---|
| \$21,000 | [Step 1] Hospital Charges |
| - \$ 1,000 | [Step 2] Applied PIP Deductible |
| <u>\$20,000</u> | [Step 3] Hospital Charges Post PIP Deductible |
| | <i>Reduction Using Medicare Part A Rate</i> |
| \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x 200% | [Step 5] Increase in Medicare Part A Rate |
| <u>\$ 5,000</u> | [Step 6] PIP Allowed Amount |
| - \$ 1,000 | [Step 7] PIP Insurer's Payment |
| - \$ 1,000 | [Step 8] PIP Coinsurance Amount |
| <u>\$ 3,000</u> | [Step 9] PIP Allowed Amount Remaining |
| ÷ .25 | [Step 10] Restoration Number (Reversing Statutory PIP Reduction) |
| <u>\$12,000</u> | [Step 11] Restored Balance |

- **Step 12:** The PIP Coinsurance Amount (\$1,000) is then added back in if unpaid.

| | |
|-----------------|---|
| \$21,000 | [Step 1] Hospital Charges |
| - \$ 1,000 | [Step 2] Applied PIP Deductible |
| <u>\$20,000</u> | [Step 3] Hospital Charges Post PIP Deductible |
| | <i>Reduction Using Medicare Part A Rate</i> |
| \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x 200% | [Step 5] Increase in Medicare Part A Rate |
| <u>\$ 5,000</u> | [Step 6] PIP Allowed Amount |
| - \$ 1,000 | [Step 7] PIP Insurer's Payment |
| - \$ 1,000 | [Step 8] PIP Coinsurance Amount |
| <u>\$ 3,000</u> | [Step 9] PIP Allowed Amount Remaining |
| ÷ .25 | [Step 10] Restoration Number (Reversing Statutory PIP Reduction) |
| <u>\$12,000</u> | [Step 11] Restored Balance |
| <u>\$ 1,000</u> | [Step 12] PIP Coinsurance Amount |

- **Step 13:** The Applied PIP Deductible (\$1,000) is then added back in if unpaid.

\$21,000 [Step 1] Hospital Charges

| | | |
|---|-----------------|---|
| - | <u>\$ 1,000</u> | [Step 2] Applied PIP Deductible |
| | \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |
| ↓ | | <i>Reduction Using Medicare Part A Rate</i> |
| | \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x | <u>200%</u> | [Step 5] Increase in Medicare Part A Rate |
| | \$ 5,000 | [Step 6] PIP Allowed Amount |
| - | \$ 1,000 | [Step 7] PIP Insurer's Payment |
| - | <u>\$ 1,000</u> | [Step 8] PIP Coinsurance Amount |
| | \$ 3,000 | [Step 9] PIP Allowed Amount Remaining |
| ÷ | <u>.25</u> | [Step 10] Restoration Number (Reversing Statutory PIP Reduction) |
| | \$12,000 | [Step 11] Restored Balance |
| + | \$ 1,000 | [Step 12] PIP Coinsurance Amount |
| + | <u>\$ 1,000</u> | [Step 13] Applied PIP Deductible |

- **Step 14:** The Balanced Bill owed is finally calculated by adding the Restored Balance (\$12,000) to the PIP Coinsurance Amount (\$1,000) and the Applied PIP Deductible (\$1,000). Here, the Balanced Bill is \$14,000 (\$12,000 + \$1,000 + \$1,000 = \$14,000).

| | | |
|---|-----------------|---|
| | \$21,000 | [Step 1] Hospital Charges |
| - | <u>\$ 1,000</u> | [Step 2] Applied PIP Deductible |
| | \$20,000 | [Step 3] Hospital Charges Post PIP Deductible |
| ↓ | | <i>Reduction Using Medicare Part A Rate</i> |
| | \$ 2,500 | [Step 4] Medicare Part A Rate Applied to Hospital Charges Post PIP Deductible |
| x | <u>200%</u> | [Step 5] Increase in Medicare Part A Rate |
| | \$ 5,000 | [Step 6] PIP Allowed Amount |
| - | \$ 1,000 | [Step 7] PIP Insurer's Payment |
| - | <u>\$ 1,000</u> | [Step 8] PIP Coinsurance Amount |
| | \$ 3,000 | [Step 9] PIP Allowed Amount Remaining |
| ÷ | <u>.25</u> | [Step 10] Restoration Number (Reversing Statutory PIP Reduction) |
| | \$12,000 | [Step 11] Restored Balance |
| + | \$ 1,000 | [Step 12] PIP Coinsurance Amount |
| + | <u>\$ 1,000</u> | [Step 13] Applied PIP Deductible |
| | \$14,000 | [Step 14] Balanced Bill owed by Patient/Insured |

- **Conclusion:** In the example above, FHSC may balance bill the patient up to \$14,000 pursuant to Fla. Stat. § 627.736(5)(a)4. As noted, FHSC may apply the same interpretation of Fla. Stat. § 627.736(5)(a)1.d. & e. and (5)(a)4 to balance bill all Prospective Relief Class

Members who receive inpatient services or outpatient services, other than emergency services and care, from FHSC and lack adequate PIP coverage to satisfy 80% of the PIP Allowed Amount under Fla. Stat. § 627.736(5)(a)1.d. & e.

C. Balance Bill Formula to be Applied in Future Cases – Inpatient/Outpatient Services

30. FHSC shall apply the following formula in calculating the amount it can balance bill patients treated on an inpatient basis under Fla. Stat. § 627.736(5)(a)1.d. and outpatient basis under Fla. Stat. § 627.736(5)(a)1.e.:

Hospital Charges – Applied PIP Deductible = **Hospital Charges Post PIP Deductible**

Hospital Charges Post PIP Deductible reduced to **Medicare Part A Rate**

Medicare Part A Rate for specific inpatient services or outpatient services increased by 200% = **PIP Allowed Amount**

PIP Allowed Amount – PIP Insurer’s Payment – PIP Coinsurance Payment = **PIP Allowed Amount Remaining**

PIP Allowed Amount Remaining ÷ Restoration Number (Reversing Statutory PIP Reduction) = **Restored Balance**

Restored Balance + PIP Coinsurance Amount + Applied PIP Deductible = **Balanced Bill owed by Patient/Insured.**

31. **Applicability of Formulas to Monetary Relief Class Members.** The formulas contained in paragraphs 17 through 30 shall be used to calculate the balances owed to FHSC by the Monetary Relief Class members and the amounts which FHSC has agreed to not attempt to collect pursuant to the Settlement Agreement. Further, said formulas shall be used to determine the minimum amounts of refunds FHSC shall distribute to the Monetary Relief Class members under Section 4 of the Settlement Agreement.

32. **Permanent Injunction.** All Class Members who have not timely excluded themselves from the Class (and therefore are not listed in Appendix “A”) are hereby permanently

barred and enjoined from (a) filing, commencing, prosecuting, continuing to prosecute, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims, and (b) organizing or soliciting the participation of any Class Members in a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit or other proceeding based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims. The Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over this Action and to protect and effectuate the Court's Final Approval Order and Declaratory Judgment.

33. **Enforcement of Settlement.** Nothing in this Final Approval Order and Declaratory Judgment or any order entered in connection herewith shall preclude any action to enforce the terms of this Final Approval Order and Declaratory Judgment or the Settlement Agreement.

34. **Changes to PIP Statute.** If, in the future, Section 627.736(5)(a)4, Florida Statutes, is repealed or amended in any material way, the declaratory judgment set forth in paragraphs 17 through 30 of this Final Approval Order and Declaratory Judgment shall become null and void, and FHSC shall only be obligated to comply with the version of the law that is in effect at the time that FHSC renders medical services to a patient whose medical expenses are covered, in whole or in part, by PIP insurance.

35. **Attorneys' Fees and Expenses.** The Court approves the settlement of attorneys' fees and costs, pursuant to its Order granting the same of even date herewith.

36. **Incentive Awards.** The named Plaintiff is hereby awarded their class representative fee pursuant to the Settlement Agreement as compensation for their time and effort in connection with the litigation of this matter.

37. **Retention of Jurisdiction.** The Court shall have exclusive and continuing jurisdiction over the implementation, interpretation and execution of the Settlement Agreement; of any orders and this Final Approval Order and Declaratory Judgment entered by the Court; and/or of the conduct or the policies and procedures described herein, with respect to all Parties hereto and all beneficiaries hereof, including all Class Members.

38. **No Admissions.** Neither this Final Approval Order and Declaratory Judgment, nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to negotiate, effectuate and implement the Settlement Agreement) is, may be construed as, or may be used as an admission or concession by or against the Released Parties as to the validity of any claim or any actual or potential fault or liability. Additionally, neither the Settlement Agreement nor any negotiations, actions, or proceedings related to it, shall be offered or received in evidence in any action or proceeding against any party hereto or any of the Released Parties in any court, administrative agency or other tribunal for any purpose whatsoever, except to enforce the provisions of this Final Approval Order and Declaratory Judgment and the Settlement Agreement; provided, however, that this Final Approval Order and Declaratory Judgment and the Settlement Agreement may be filed and used in any action, arbitration or other proceeding against or by the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

39. **No Representations Regarding Taxes.** The Court finds that the Parties and their counsel have expressed no opinions concerning the tax consequences of the settlement to Class Members and have made no representations, warranties or other assurances regarding any such tax consequences. No opinions, representations, warranties, or other assurances shall be deemed to have been made by the Parties or their counsel with respect to any such tax consequences by virtue of the Settlement Agreement or by effectuating the settlement, and the Parties and their counsel shall not be responsible or liable for any such tax consequences that may occur.

40. **Dismissal of Action.** This Action, including all of the individual and class claims included therein, is hereby dismissed on the merits and with prejudice against Plaintiff and all other Class Members, without fees or costs to any party except as specifically provided in this Final Approval Order and Declaratory Judgment and incorporated Settlement Agreement.

41. **Continuing Jurisdiction.** Without affecting the finality of this Final Approval Order and Declaratory Judgment, the Court reserves continuing and exclusive jurisdiction over all matters relating to the administration, implementation, effectuation and enforcement of this Final Approval Order and Declaratory Judgment.

DONE AND ORDERED in Chambers, in Tampa, Hillsborough County, Florida on this _____ day of _____, 2023.

Electronically Conformed 4/13/2023
Paul Huey

HONORABLE PAUL L. HUEY
Circuit Court Judge

Conformed copies to:

- Craig E. Rothburd (*CERPA File No. 6954*)
- Scott R. Jeeves
- Casim A. Neff
- Simon Gaugush
- Austin M. Eason
- Mathew Allen