

MEMORANDUM

DATE: November 10, 2022
 TO: Randy Scott, President, and Members of the Health Service Board
 FROM: Iftikhar Hussain, CFO
 SUBJECT: Approval for Acceptance and Use of Settlement Distribution from UFCW & Employers Benefit Trust v. Sutter Health for Underwriting Rate Setting Process

Overview

SHHSS received \$14,793,288 on 9/26/2022 as first distribution of its share of the settlement. The payment was deposited in the health benefit trust. The second and final distribution will be made in March 2023 and will be approximately \$2M. The distribution was calculated based on the court approved plan of allocation under which SHHSS's pro rata share is 4.359%.

The current charter and Terms of Reference do not specifically address legal settlements. However, SFHSS practice for managing surpluses and deficits is to incorporate them in the underwriting rate setting process for future years. The underwriting rate setting process maintains adequate reserves in the benefit trust based on actuarial estimates. This settlement distribution will be used to lower rates for the impacted plans beginning with plan year 2024.

History and Description of the Case

The table below shows the key dates related to this dispute:

Key Dates	
April 28, 2011	PBGH-invited testimony on Market Consolidation and Hospital Cost and Quality at C&C SF Board of Supervisors meeting
March 23, 2012	PBGH meets with California Attorney General's office and participates in AG investigation
April 7, 2014	The United Food and Commercial Workers (UFCW) & Employers Benefit Trust brought suit against Sutter Health
August 14, 2017	The Court authorized Plaintiff to represent a Class of self-funded payors defined as citizens of California and government entities
March 29, 2018	The California State Attorney General joins lawsuit
December 19, 2019	\$575 million settlement and injunctive relief terms announced
August 27, 2021	Final approval of settlement

The complaint filed on April 7, 2014 alleged that since the early 2000s Sutter Health has used anticompetitive contract terms and contracting practices with the major health insurance companies in California to insulate itself from competition and to increase prices. As administrators for SFHSS, access to Sutter providers and facilities were through the respective contracts that each health plan had with Sutter.

On December 19, 2019, the United Food and Commercial Workers (UFCW) & Employers Benefit Trust filed for preliminary approval of the settlement. On March 9, 2021 the Superior Court of the State of

California, City and County of San Francisco granted preliminary approval of the \$575 million settlement. In April, SFHSS submitted the claim form to be a member of the class.

Settlement Terms: Injunctive Relief

In addition to the payment, the settlement includes the following injunctive relief.

- Limit charges for out-of-network services under a fixed cap
- Increase transparency via access to pricing, quality, and cost information
- Halt contracting tactics that prevent health plans and employers from steering members to lower cost plans
- Stop all-or-nothing contracting deals (tiering out one Sutter hospital and losing all 24 hospitals)
- Cease anticompetitive bundling of services and products
- Cooperate with a court-approved compliance Monitor
- Set definitions on clinical integration and patient access