

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into by the Medicaid Fraud and Residential Abuse Unit (“MFRAU”) of the Office of the Vermont Attorney General (“State”), and 300 Pearl Street Operations LLC (dba Burlington Health & Rehab); 1248 Hospital Drive Operations LLC (dba St. Johnsbury Health & Rehab); and 98 Hospitality Drive Operations LLC (dba Berlin Health & Rehabilitation) (collectively the “Genesis Centers”), all subsidiaries of Genesis Healthcare, Inc., through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

1. Genesis Healthcare, Inc., headquartered in Kennett Square, Pennsylvania, owns and operates through subsidiaries skilled-nursing and assisted-living facilities throughout the United States, including nine nursing homes in Vermont. The Genesis Centers are among those nine nursing homes.
2. 300 Pearl Street Operations, LLC is a domestic, member-managed, limited liability company. It holds the Vermont license to operate the Burlington Health & Rehab nursing home, located at 300 Pearl Street, Burlington, VT 05401. It is the owner of the trade name “Burlington Health & Rehab.”
3. 1248 Hospital Drive Operations LLC is a domestic, member-managed, limited liability company. It holds the Vermont license to operate the St. Johnsbury Health and Rehabilitation nursing home, located at 1248 Hospital Drive, St. Johnsbury, VT 05819. It is the owner of the trade name “St. Johnsbury Health & Rehab.”

4. 98 Hospitality Drive Operations LLC is a domestic, member-managed, limited liability company. It holds the Vermont license to operate the Berlin Health and Rehabilitation nursing home, located at 98 Hospitality Drive, Barre, VT 05641. It is the owner of the trade name “Berlin Health & Rehabilitation Center.”

5. The Genesis Centers are currently and were at the time enrolled as Vermont Medicaid providers from January 2018 through June 2019 (“relevant time period”), providing residential and skilled nursing care to their residents. As Medicaid providers, pursuant to their Vermont Medicaid Provider Enrollment Agreements, the Genesis Centers agreed to comply with applicable state and federal rules and regulations, including the Vermont False Claims Act, 32 V.S.A. § 631, *et. seq.*, governing the submission of claims to the Medicaid program (“Government Healthcare Program Requirements”).

6. The State of Vermont licensed the Genesis Centers to operate skilled-nursing facilities during the relevant time period. As licensed providers, the Genesis Centers were required to comply with all laws and regulations related to their licenses, including the Vermont Agency of Human Services Licensing and Operating Rules for Nursing Homes.

7. Vermont law, 13 V.S.A. § 1375, *et. seq.*, affords special protections to “vulnerable adults” and imposes heightened responsibilities on their “caregivers” (“Vermont Vulnerable Adult Statutes”). During the relevant time period, the Genesis Centers’ residents were vulnerable adults, and the Genesis Centers were caregivers, under the law. Pursuant to 13 V.S.A. § 1378, it is unlawful for a caregiver to intentionally or recklessly neglect a vulnerable adult.

8. Beginning in 2018, and continuing into 2019, MFRAU investigated the Genesis Centers after receiving referrals of potential neglect of residents, including an untimely death.

MFRAU completed its investigations in 2019. During the course of those investigations, the State obtained evidence that it contends gives rise to certain civil claims against the Genesis Centers for engaging in the conduct described in subparagraphs A through E below (“Covered Conduct”), during all or part of the relevant time period. Specifically, the State alleges:

- A. 300 Pearl Street Operations, LLC employed a visiting nurse as a contract staff member. Although unfamiliar with the facility’s residents, their dietary needs and the meal delivery process, the staff member was asked to deliver food trays to bed-bound residents, including residents on highly specialized diets. The staff member delivered the wrong tray to Resident 1, who was on a specialized diet and required constant supervision while eating. After delivering the wrong tray, the staff member left Resident 1 alone and unsupervised. Resident 1 ingested the improper food, which became lodged in Resident 1’s throat causing a respiratory emergency and ultimately resulting in death.
- B. 300 Pearl Street Operations, LLC failed to arrange or provide mental health counseling, social services or addiction counseling services to Resident 2 to address concerns detailed in the resident’s care plan. Additionally, the facility discharged Resident 2, who was unable to care for his basic needs, in an unsafe manner and under circumstances where a negative health outcome was reasonably foreseeable. As a result, within one day following discharge, Resident 2 required emergency hospitalization and prolonged treatment for a serious sepsis infection.
- C. 1248 Hospital Drive Operations LLC utilized the services of a contract staff member to perform the duties of a dietary aide. Although unfamiliar with the facility’s residents and their dietary needs, the staff member was asked to prepare food trays for

residents, including residents on highly specialized diets. The staff member plated the wrong tray for delivery to Resident 3 who was on a specialized diet, requiring ground meat. As a result, Resident 3 ingested unground meat and experienced a choking incident requiring hospitalization.

- D. 98 Hospitality Drive Operations LLC staff members identified two ulcers on the lower leg of Resident 4 but did not perform required wound assessments thereafter. As a result, the ulcers deteriorated, and Resident 4 required emergency hospitalization for treatment.
- E. The Genesis Centers submitted claims to Medicaid for the services provided to the Residents 2 and 4, including services on the dates of their injuries. Also, the Genesis Center's conduct caused area hospitals and hospice providers to submit claims to Medicaid for care provided to Residents 1-4.

9. The State contends that the Covered Conduct constitutes violations of the Genesis Centers' Provider Enrollment Agreements, Government Health Care Program Requirements, including the Vermont False Claims Act 32 V.S.A. §630, *et seq.*, and the Vermont Vulnerable Adult Statutes, for which it could seek, or is seeking, remedy through administrative or civil action.

10. The Genesis Centers do not dispute the facts regarding the Covered Conduct insofar as they are described above in paragraph 8 (subparagraphs A through E). However, the Genesis Centers believe that there are additional facts that would show a lack of the requisite intent or would demonstrate that any improper billing, if any were submitted, was the result of mistake or error. Therefore, the Genesis Centers deny liability in general, and specifically deny that they violated their Provider Enrollment Agreements, Government Health Care Program

Requirements, the Vermont False Claims Act, the Vermont Vulnerable Adult Statutes or any other state or federal law.

11. To avoid the delay, expense, inconvenience, and uncertainty of litigation, and in consideration of the mutual promises and obligations of this Agreement, the Parties reach a full and final settlement related to the Covered Conduct, pursuant to the Terms and Conditions set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. The Centers shall engage at their own expense Affiliated Monitors, Inc., to serve as Quality of Care Reviewer (“QC Reviewer”), for a maximum term of three years. This is a material obligation of this Agreement. The term, duties and responsibilities of the QC Reviewer are described in Attachment A which is incorporated here by reference.

2. The Centers shall engage at their own expense a Patient Care Coordinator, approved by the State, to serve for a maximum term of three years. This is a material obligation of this Agreement. The term, duties and responsibilities of the Patient Care Coordinator are described in Attachment B which is incorporated here by reference.

3. The Genesis Centers shall pay to the State \$740,143 (“Settlement Amount”). The Settlement Amount includes damages under the Vermont Vulnerable Adult Statutes, and damages and penalties under the Vermont False Claims Act. Genesis Centers shall pay the Settlement Amount as follows:

- a. On or before March 1, 2020, the Genesis Centers shall pay \$370,071.50 by electronic funds transfer pursuant to written instructions provided by the Vermont Attorney General's Office.
- b. On or before June 30, 2020, the Genesis Centers shall pay \$370,071.50 by electronic funds transfer pursuant to written instructions provided by the Vermont Attorney General's Office.

4. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of the Genesis Centers set forth in this Agreement, and conditioned upon the Genesis Centers' payment in full of the Settlement Amount, and compliance with any other material obligations, including the engagement of, and good-faith cooperation with, the QC Reviewer and the Patient Care Coordinator (described in Paragraphs 1 and 2 above), the State (on behalf of itself, its officers, agents, agencies, and departments) releases the Genesis Centers from any civil or administrative claim the State has or may have for the Covered Conduct. This release specifically excludes any and all parent entities of the Genesis Centers.

5. In consideration of the obligations of the State set forth in this Agreement, the Genesis Centers, their current and former parents, divisions, subsidiaries, successors, transferees, heirs, assigns, direct or indirect affiliates, current and former owners, shareholders, principals, members, directors, officers, employees, representatives, servants, agents and consultants, release the State, its agencies, political subdivisions, employees, servants, and agents, from any claims that the Genesis Centers have asserted, could have asserted, or may assert in the future against the State, related to the Covered Conduct and the State's investigation thereof.

6. Notwithstanding any terms of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following:

- a. Any liability arising under Vermont state tax codes, Vermont tax laws or Vermont tax regulations;
- b. Any criminal, civil or administrative liability to the State for conduct other than the Covered Conduct;
- c. Any liability based upon obligations created by this Agreement;
- d. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- e. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. The Genesis Centers shall be deemed in default of this Agreement if the State, in its sole discretion, determines that a Default Event, described in subparagraph a and b below, has occurred, after following the procedure described in Paragraph 9 below:

- a. The Genesis Centers fail to pay either installment payment of the Settlement Amount provided for in Section III, Paragraph 3(a-b) of this Agreement; or
- b. The Genesis Centers fail to satisfy any other material obligations undertaken in this Agreement.

8. In the event the State determines that a Default Event has occurred, the State shall provide written notice (“Notice of Default”) and allow the Genesis Centers an opportunity to cure the Default Event within ten (10) business days of receipt of the written notice. Notice of

Default will be sent by certified first class mail to: Kelly C. Tripp, Associate General Counsel Health Care and Regulatory, Genesis Administrative Services, LLC., 101 East State Street, Kennett Square, Pennsylvania 19348.

9. If the Genesis Centers do not cure the Default Event to the State's reasonable satisfaction (a) within ten (10) business days of receipt of the Notice of Default, or (b) if the cure requires more than ten (10) days, immediately initiate steps that the State reasonably deems to be sufficient to cure the default and thereafter diligently continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical, the Vermont Attorney General's Office may declare the Genesis Centers in default of this Agreement ("Declaration of Default").

10. Upon a Declaration of Default, the State may exercise, at its sole option, one or more of the following rights, as applicable:

- A. Declare this Agreement breached, and proceed against the Genesis Centers for any claims, including those to be released by this Agreement, in which case the Genesis Centers may contest whether a Default has occurred in court;
- B. Exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity.

11. The Parties represent that this Agreement is freely and voluntarily entered into with the advice of counsel without any degree of duress or compulsion whatsoever.

12. Each party to this Agreement shall bear his, her or its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. The laws of the State of Vermont govern this Agreement. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the Vermont Superior Court, Washington County, unless otherwise agreed in writing by the State and the Genesis Centers.

14. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

15. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the Settlement Amount for the purposes of the state or federal tax laws. The Genesis Centers will rely on its own counsel or experts regarding the effect of this Agreement under any state or federal tax laws.

16. The Genesis Centers represent and warrant that the representative(s) designated below are authorized to execute this Agreement on their behalf, and that the Genesis Centers have not assigned any claims, rights or liabilities subject to this Agreement to any other person. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

17. Facsimiles of or pdf signatures shall constitute acceptable binding signatures for purposes of this Agreement.

18. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

19. This Agreement constitutes the complete agreement among the State and the Genesis Centers with respect to this matter and shall not be amended except by written consent of the Parties.

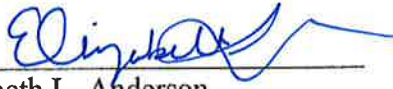
20. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement.

21. This Agreement is effective on the date of the signature of the last signatory to the Agreement (“Effective Date”)

SIGNATORIES

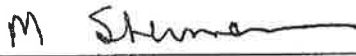
STATE OF VERMONT
THOMAS J. DONOVAN, JR.
VERMONT ATTORNEY GENERAL

DATED: Feb 14, 2020

BY: 
Elizabeth L. Anderson
Assistant Attorney General
Director, MFRAU

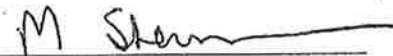
300 PEARL STREET OPERATIONS LLC

DATED: February 14, 2020

BY: 
Michael S. Sherman, Esq.
Secretary


98 HOSPITALITY DRIVE OPERATIONS LLC

DATED: February 14, 2020

BY: 
Michael S. Sherman, Esq.
Secretary

1248 HOSPITAL DRIVE OPERATIONS LLC

DATED: February 14, 2020

BY: 
Michael S. Sherman, Esq.
Secretary