

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively the “United States”); the State of Vermont, acting through the Medicaid Fraud and Residential Abuse Unit of the Vermont Attorney General’s Office on behalf of the Department of Vermont Health Access (collectively the “State of Vermont”); and Health Care & Rehabilitation Services of Southeastern Vermont (“HCRS”) (hereafter referred to collectively as “the Parties”), through their authorized representatives.

II. RECITALS

A. HCRS is a nonprofit organization and State of Vermont designated provider of community mental health, substance abuse and developmental services to individuals in Windham and Windsor Counties. HCRS’s budgeted revenue is primarily funded by State of Vermont Medicaid, other grants and contracts with the State of Vermont, National Government Services Medicare, and Tri-Care-Humana Military.

B. HCRS brought this matter to the attention of the United States and the State of Vermont by voluntary self-disclosure. On June 13, 2019, HCRS made a submission pursuant to OIG-HHS’s Provider Self-Disclosure Protocol (“Protocol”), and OIG-HHS accepted HCRS into the Protocol on July 12, 2019.

C. The United States and State of Vermont contend that HCRS knowingly employed an individual as a social worker, who was excluded from participation in Medicare, Medicaid, and all Federal health care programs between December 24, 2009 and May

15, 2019, and improperly submitted claims for services provided by the excluded individual during this period to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”); and the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”). That conduct is referred to below as the “Covered Conduct.”

D. The Covered Conduct violates 42 U.S.C. § 1320a-7a(a)(6) and constitutes the submission of false claims under the False Claims Act, 31 U.S.C. §§ 3729-3733 and the Vermont False Claims Act, 32 V.S.A. § 631, *et. seq.*

E. The United States contends that it also has certain administrative claims, as specified in Paragraph 6 below, against HCRS for engaging in the Covered Conduct.

F. This Agreement is an admission of liability by HCRS.

G. HCRS has implemented and will continue to implement the following remedial measures:

1. HCRS will run a full List of Excluded Individuals and Entities (“LEIE”) exclusion check for all employees, including all past legal names, prior to hire and once every month;
2. HCRS will run full LEIE exclusion checks for all contractor individuals and organizations who provide services to HCRS, including all past legal names, prior to the commencement of the contract and once every month;
3. An outside vendor will conduct monthly LEIE exclusion checks on HCRS employees and contractors and will bring any potential positive matches to the immediate attention of HCRS’s Chief Financial Officer.

H. To avoid the delay, uncertainty, inconvenience, and expense of

protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. HCRS shall pay to the United States and the State of Vermont a total of **\$170,037.76** (“Settlement Amount”), of which \$113,358.50 is restitution. The Vermont Medicaid program restitution is \$101,254.61; the Medicare restitution is \$11,872.54; and the TRICARE restitution is \$231.35. To date, HCRS has repaid a total of \$112,744.69 to Medicare, Medicaid, and TRICARE, resulting in an outstanding settlement balance of **\$57,293.07** (“Settlement Balance”). HCRS shall pay the Settlement Balance by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Vermont within 30 days of the execution of the instant agreement (“Effective Date”).

2. The Settlement Amount reflects a cooperation credit awarded to HCRS, due to its self-disclosure of the violation, efforts to assist the United States and the State of Vermont in their investigations, and its voluntary implementation of meaningful remedial measures.

3. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, in consideration of the obligations of HCRS set forth in this Agreement, and conditioned upon the United States’ and State of Vermont’s receipt of the Settlement Amount, the United States releases HCRS from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program

Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, in consideration of the obligations of HCRS set forth in this Agreement, and conditioned upon the United States' and State of Vermont's receipt of the Settlement Amount, the State of Vermont releases HCRS from any civil or administrative monetary claim the State of Vermont has for the Covered Conduct under the Vermont False Claims Act, 32 V.S.A. §§ 630-642; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. HCRS fully and finally releases the United States and the State of Vermont, their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that HCRS has asserted, could have asserted, or may assert in the future against the United States and the State of Vermont, and their agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' and State of Vermont's investigation and prosecution thereof.

6. In consideration of the obligations of HCRS in this Agreement, and upon the United States' receipt of full payment of the Settlement Amount; the OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against HCRS under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 7 (concerning reserved claims), below, and as reserved in this paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude HCRS

from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 7, below.

7. Notwithstanding the releases given in Paragraphs 3, 4, and 6 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States and the State of Vermont are specifically reserved and are not released:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) or the State of Vermont for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or

for other consequential damages arising from the Covered Conduct;

- i. Any liability of individuals, including officers and employees; or
- j. Any claims and/or actions related to any professional license; business license; the unlicensed practice of a profession; or the unlicensed operation of a business.

8. HCRS waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct, that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any State payer, related to the Covered Conduct; and HCRS shall not resubmit to any Medicare contractor or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims, and agrees to withdraw any such pending appeals.

10. HCRS agrees to the following:

- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§

1395-1395kkk-1 and 1396-1396w-5, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of HCRS, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and State of Vermont's civil investigation of the matter covered by this Agreement;
- (3) HCRS's investigation, defense, and corrective actions undertaken in response to the United States' and State of Vermont's civil investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment HCRS makes to the United States and the State of Vermont pursuant to this Agreement,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by HCRS, and HCRS shall not charge such Unallowable Costs directly or

indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by HCRS or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: HCRS further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by HCRS or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. HCRS agrees that the United States, at a minimum, shall be entitled to recoup from HCRS any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-

submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by HCRS or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on HCRS or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

- d. Nothing in this Agreement shall constitute a waiver of the rights of the United States and the State of Vermont to audit, examine, or re-examine HCRS's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

11. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 12 (waiver for beneficiaries paragraph), below.

12. HCRS waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

13. Each Party to this Agreement shall bear its own legal and other costs

incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Vermont. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in a subsequent dispute.

16. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

17. The individuals signing this Agreement on behalf of HCRS represent and warrant that they are authorized by HCRS to execute this Agreement. The United States and State of Vermont signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

19. This Agreement is binding on HCRS's successors, transferees, heirs, and assigns.

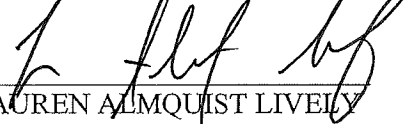
20. All Parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

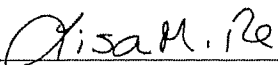
21. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to the Agreement. Facsimiles and electronic transmissions of signatures

shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

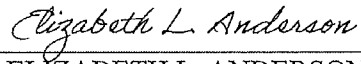
JONATHAN A. OPHARDT
Acting United States Attorney
District of Vermont

DATED: 6/29/2021 BY: 
LAUREN ALMQUIST LIVELY
Assistant United States Attorney

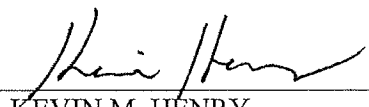
DATED: 6/24/2021 BY: 
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
VERMONT ATTORNEY GENERAL

DATED: June 25, 2021 BY: 
ELIZABETH L. ANDERSON
Assistant Attorney General
Director, Medicaid Fraud & Residential Abuse Unit

HEALTH CARE & REHABILITATION SERVICES
OF SOUTHEASTERN VERMONT

DATED: 6/24/21 BY: 
KEVIN M. HENRY
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Primmer Piper Eggleston & Cramer PC