



## State of North Carolina

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ROY COOPER  
ATTORNEY GENERAL

October 17, 2012

North Carolina Senate President Pro Tempore Phil Berger  
North Carolina House of Representatives Speaker Thom Tillis  
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator Harry Brown  
Senator Thom Goolsby  
Representative James Boles, Jr.  
Representative Leo Daughtry  
Representative Pat Hurley  
Representative Shirley B. Randleman  
Co-Chairs, Appropriations Subcommittees on Justice and Public Safety

North Carolina General Assembly  
Raleigh, North Carolina 27601-1096

RE: G.S. §114-2.5; Report on Settlement Agreement for Johnston Ambulance Service, Inc.

Dear Members:

Section 114-2.5 of the North Carolina General Statutes requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the state and federal governments in the above-referenced matter. Pursuant to federal law (42 C.F.R. § 433.320) recoveries in these cases are shared on a pro rata basis by the state and federal governments.

A Settlement Agreement has been executed between Johnston Ambulance Service, Inc., ("Johnston Ambulance") and the State of North Carolina. Johnston Ambulance is an ambulance transport company that provides routine non-emergency ambulance transport in North Carolina. The settlement resolves allegations that from October 2002 through March 2011, Johnston Ambulance knowingly billed the Medicare and Medicaid programs for non-emergency

ambulance transport of dialysis patients and others to and from their nursing homes and residences, which were not medically necessary.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$200,000. Of that amount, the federal government will receive \$192,703.55 to satisfy North Carolina's obligation to return the federal portion of Medicaid and Medicare recoveries to the federal government. The North Carolina Medicaid Program will receive \$7,007.51 as restitution. Pursuant to G.S. §108A-70.12(b)(3), the North Carolina Department of Justice will receive \$288.94 for investigative costs.

We will be happy to respond to any questions you may have regarding this report.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kristi Hyman", followed by a long horizontal flourish line.

Kristi Hyman  
Chief of Staff

KH:ng

cc: Kristine Leggett, NCGA Fiscal Research Division  
Nels Roseland, NCDOJ, Deputy Chief of Staff

## SETTLEMENT AGREEMENT

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 North Carolina, by and through the North Carolina Attorney General, and the North Carolina Division of Medical Assistance (collectively the "Government" includes both federal and state entities above), and Johnston Ambulance Services, Inc., through their authorized representatives. The above parties to this agreement are hereafter collectively referred to as "the Parties."

### RECITALS

A. Defendant Johnston Ambulance Services, Inc. (hereinafter "JAS"), is an ambulance transport company that provides routine non-emergency ambulance transport in North Carolina, as well as other services.

B. The Government contends that JAS submitted or caused claims to be submitted for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and the Medicaid Program (Medicaid) 42 U.S.C. §§ 1396-1396w-5.

C. On March 28, 2011, the United States of America filed a civil action against JAS in the United States District Court for the Eastern District of North Carolina, Case No. 5:11-cv-141-D, in which the Government contends that it has civil claims against JAS arising from the submission of false or fraudulent claims to Medicare and Medicaid for non-emergency ambulance transport of dialysis patients and others to and from their nursing homes and residences, which were not medically necessary during the period from October 2002 to the present (the "Civil Action").

D. The Government contends that it has certain civil claims against JAS arising from false claims to Medicare and Medicaid for non-emergency ambulance transport for 12 patients identified and reviewed by the parties (identified as TA, AB, CB, VB, WF, IL, SM, MO, BR, ER, DS, LW), which were not medically necessary during the period from November 1, 2002, through January 31, 2011. That conduct is referred to below as the Covered Conduct.

E. This Settlement Agreement is neither an admission of liability by JAS nor a concession by the Government that its claims are not well founded. 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:

#### TERMS AND CONDITIONS

1. JAS shall pay to the Government \$200,000 ("Settlement Amount"), and interest on the Settlement Amount at the rate of 4% per annum or the Medicare Trust Fund Interest Rate, whichever is higher, from May 24, 2012, by electronic funds transfer pursuant to written instructions to be provided by the office of the United States Attorney for the Eastern District of North Carolina, no later than 60 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon JAS's full payment of the Settlement Amount, and subject to Paragraph 13, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States releases JAS from any civil or administrative monetary claim the United States has 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.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon JAS's full payment of the Settlement Amount, and subject to Paragraph 13 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the State of North Carolina releases JAS from any civil or administrative monetary claim the State of North Carolina has for the Covered Conduct under the North Carolina Medical Assistance Provider False Claims Act, N.C.G.S. § 108A-70.10 et. seq., the North Carolina False Claims Act, N.C.G.S. § 1-605, et. seq., and the common law theories of payment by mistake, unjust enrichment, and fraud.

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against JAS and/or its officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

5. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the Government are specifically reserved and are not released:

- a. Any 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, including mandatory exclusion from Federal health care programs;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon obligations 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; and
- i. Any liability of individuals.

6. JAS 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. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

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

8. 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 carrier or intermediary or any

state payer, related to the Covered Conduct; and JAS agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

9. JAS 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 JAS, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Government' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) JAS's investigation, defense, and corrective actions undertaken in response to the Government' audit(s) and civil investigation(s) 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 JAS makes to the Government pursuant to this Agreement.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by JAS, and they shall not charge such Unallowable Costs directly or indirectly to any contracts with the Government 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 JAS or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: JAS 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 Government, 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 JAS 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. JAS agrees that the Government, at a minimum, shall be entitled to recoup from JAS 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 Government pursuant to the direction of the Department of Justice and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by JAS or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on JAS 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 Government to audit, examine, or re-examine JAS's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

10. 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 11 (waiver for beneficiaries paragraph), below.

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

12. JAS warrants that it has reviewed his financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to JAS, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which JAS was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

13. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, JAS commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of JAS's debts, or seeking to adjudicate JAS as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for JAS or for all or any substantial part of JAS's assets, JAS agrees as follows:

a. JAS's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and JAS shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) JAS's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) JAS was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the Government; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to JAS.

b. If JAS's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against JAS for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. JAS agrees that (i) any such claims, actions, or proceedings brought by the Government (including any administrative action seeking exclusion against JAS) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and JAS shall not argue or otherwise contend that the Government's claims, actions, or proceedings are subject to an automatic stay; (ii) JAS shall not plead, argue, or

otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the Government within 180 calendar days of written notification to JAS that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 28, 2011, and (iii) the Government has a valid claim against JAS in the case, proceeding, or other action described in this paragraph 14 in the amount of \$1,894,302, and the Government may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. JAS acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the Civil Action pursuant to Rule 41(a)(1).

15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

17. 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 Eastern District of North Carolina. 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 any subsequent dispute.

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

19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

21. This Agreement is binding on JAS's successors, transferees, heirs, and assigns.

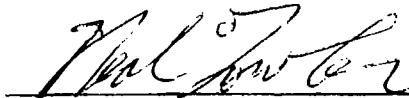
22. All parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


**THE UNITED STATES OF AMERICA**

THOMAS G. WALKER  
United States Attorney

Dated: 7-24-12

By:   
NEAL I. FOWLER  
Assistant United States Attorney

Dated: 7/16/12

By:   
GREGORY E. DEMSKE  
Chief Counsel to the Inspector General for  
Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and  
Human Services

**THE STATE OF NORTH CAROLINA**

Dated: 7/24/2012

By: Charles H. Hobgood  
CHARLES H. HOBGOOD  
Special Deputy Attorney General North  
Carolina Department of Justice  
Telephone: (919) 881-2334

**JOHNSTON AMBULANCE SERVICES, INC. - DEFENDANT**

Dated: 6-15-2012

By: M. / Lt Martin  
JOHNSTON AMBULANCE  
SERVICE, INC.

Dated: 7/10/12

By: D. Davis  
KEARNS DAVIS  
D.J. O'BRIEN III  
STEPHEN R. WIRTH  
*Counsel for Defendant*