

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the North Carolina Office of the Attorney General on behalf of the State of North Carolina (“North Carolina”) and Dr. A. Khara, DMD, PA, d/b/a “Dream Smiles”, hereinafter referred to as “Dream Smiles”), and Amardeep Khara, DMD, North Carolina Medicaid Providers. Each of the above is hereafter referred to as “the Parties” through their authorized representative.

RECITALS

A. Dream Smiles was a Medicaid Provider since at least 2013 and provides orthodontic services to Medicaid beneficiaries in the State of North Carolina. Medicaid Providers may submit claims to the North Carolina Medicaid Program for services that are medically necessary for the care of Medicaid beneficiaries and which comply with Medicaid Clinical Policy. The State contends that it has certain civil claims against Dream Smiles arising from the following conduct, during the dates of January 1, 2018, through June 17, 2022, for Dream Smiles’ submission of claims to the North Carolina Medicaid Program for medical services, to wit, as follows: causing the submission of false or fraudulent claims to the North Carolina Medicaid Program for dental services, to wit, Current Dental Terminology (hereinafter referred to as “CDT”) D9110 (“Palliative (emergency) treatment of dental pain – minor procedure”), which had insufficient supporting clinical documentation, were not medically necessary, and/or were performed in violation of Division of Health Benefits Clinical Coverage Policy.

The conduct referenced in this paragraph is referred to below and throughout this Agreement as the “Covered Conduct.”

B. North Carolina contends that Dream Smiles’ submission of such claims for payment to the North Carolina Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, violates the North Carolina False Claims Act, N.C.G.S. §§ 1-605, *et seq.*,

and the Medical Assistance Provider Claims Act, N.C.G.S. §§ 108A-70.10, *et seq.*

C. This Agreement is neither an admission of liability by Dream Smiles, nor a concession by the State that its claims are not well founded.

D. 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Dream Smiles shall pay to North Carolina the aggregate principal amount of Three Hundred Thirty Thousand dollars (\$330,000.00) (the “Settlement Amount”), of which One Hundred Sixty-Five Thousand Dollars (\$165,000.00) is restitution. No later than forty-five (45) days after full execution of this Agreement, Dream Smiles will pay to the State, as directed herein, no less than \$165,000.00 by **certified check**, made payable to the North Carolina Fund for Medical Assistance and **hand-delivered** (which shall include delivery services such as Federal Express and United Parcel Service) to the Medicaid Investigations Division (“MID”), 5505 Creedmoor Road, Suite 300, Raleigh, NC 27612 (“MID address”). Thereafter, beginning on January 1, 2024, Dream Smiles shall begin making payments as to the remaining outstanding balance plus interest, as set forth in **Exhibit A**, every three (3) months for a period of time not to exceed twenty-four (24) months. At any time prior to the completion of said twenty-four-month payment schedule, Dream Smiles may pay the remaining outstanding balance, plus interest, of said Settlement Amount, without any further penalty. Dream Smiles shall make payments as set forth above, until all remaining outstanding settlement monies are paid in full, transfer to be credited by the Government toward the Settlement Amount (or if on a weekend or holiday, the next United States business day) (each such day, a “Payment Date”) pursuant to the schedule referenced above until the remaining Settlement Amount is paid in full (unless the number of payments, final payment

date or final payment amount is reduced or the final payment date accelerated by the provisions of this Paragraph 1). To provide security as to the outstanding balance of \$165,000.00, after said initial payment set forth above, Dr. A. Khara, DMD, PA, and Amardeep Khara, DMD, shall sign a Confession of Judgment (Pursuant to N.C.G.S. 68.1, et seq.) for the amount of \$165,000.00 plus interest which may be docketed upon his failure to timely pay the agreed upon payment amounts as reflected herein, and his failure to cure such non-payment within 30 days. Interest payable to the Government shall accrue at an annual rate of 2.75%, and on each Payment Date all interest, computed as 90 days (or, if the first payment, since the Effective Date) 365 (or 366 during a calendar "leap" year) times 165,000.00 times .0275, shall be deemed immediately due and payable. Prepayment of any portion of the Settlement Amount is allowed. Interest, as computed by the provisions of Paragraph 1, shall also be due and payable on the date of any pre-payment. Upon any default by Dream Smiles and/or Amardeep Khara, DMD of the terms contained in Paragraph 1 or any other terms of this Agreement, the Government shall have the unconditioned right to accelerate payment and require that the full Settlement Amount then-outstanding be immediately due and payable.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Dream Smiles' full payment of the Settlement Amount, North Carolina releases Dr. A. Khara, DMD, PA, and Amardeep Khara, DMD, together with its current and former parent corporations, partnerships, joint ventures, limited liability company owners and other parent entities; direct and indirect subsidiaries; brother or sister corporations, and other owned entities; divisions; affiliates; current or former corporate partnerships, joint ventures and limited liability companies; and the successors and assigns of any of them (collectively, the "Defendant Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the States' Medicaid Program for the Covered Conduct under

the North Carolina Medical Assistance Provider Fraud 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.*; the common law theories of payment by mistake, unjust enrichment, and fraud; and any other right to recoupment or recovery of the Medicaid payments related to the Covered Conduct.

3. In the event that Dream Smiles fails to pay any amount as provided in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, Dream Smiles shall be in Default of their payment obligations ("Default"). North Carolina will provide written notice of the Default, and Dream Smiles shall have an opportunity to cure such Default within thirty (30) business days from the date of the receipt of the notice. Notice of Default will be delivered via certified mail to Dream Smiles, or to such other representative as Dream Smiles shall designate in advance in writing. If Dream Smiles fails to cure the Default within thirty (30) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal, balance, and interest due). In the event of a Default, the State may, in its sole discretion, choose to set aside the Agreement and bring an action against Dream Smiles for the Covered Conduct.

4. Notwithstanding the releases given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims 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 or permissive exclusion from government health care programs;
- d. Any liability to North Carolina (or its agencies) for any conduct other than the Covered Conduct; or

e. Any liability based upon obligations created by this Agreement.

4. Dr. A. Khara, DMD, PA, and Amardeep Khara, DMD, waives and shall not assert any defenses they may have 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 to any criminal prosecution or administrative action relating to the Covered Conduct. This Agreement bars those remedies in such a criminal prosecution or administrative action. Beyond these defenses, which are specifically waived, Dream Smiles retains and reserves their rights to assert any other defenses in any criminal prosecution or administrative action that might be brought.

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

6. The Settlement Amount shall not be decreased as a result of the denial of claims for payment and/or as a result of funds which are otherwise being withheld from payment by the Medicaid Program or any Medicaid contractor or intermediary or any state payor on behalf of the Medicaid Program, related to the Covered Conduct; and Dream Smiles agrees not to resubmit to the Medicaid Program, any state payor or any of the other above entities acting on behalf of the Medicaid Program, any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims related to the Covered Conduct.

7. 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 as provided in this paragraph. Dream Smiles agrees that they waive and shall not seek payment for any of the health care billings related to the Covered Conduct from any health care beneficiaries or their parents, sponsors, legally

responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

8. Dream Smiles warrants that it has reviewed its respective financial situation(s) and that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall, to the fullest extent possible, remain solvent during payment to North Carolina 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 Dream Smiles within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations due, 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 Dream Smiles was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

9. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, Dream Smiles 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 Dream Smiles' debts, or seeking to adjudicate Dream Smiles as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar officials for Dream Smiles, or for all or any substantial part of Dream Smiles' assets, Dream Smiles agree as follows:

a. Dream Smiles' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Dream Smiles shall not argue or otherwise take the position in any such case, proceeding, or action that:

(i) Dream Smiles' obligations under this Agreement may be avoided

under 11 U.S.C. § 547;

(ii) Dream Smiles was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to North Carolina; or

(iii) The mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Dream Smiles.

b. If Dream Smiles' 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, North Carolina, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Dream Smiles, for the claims that would otherwise be covered by the releases provided in Paragraph 5 above. Dream Smiles agrees that:

(i) Any such claims, actions, or proceedings brought by North Carolina 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 Dream Smiles shall not argue or otherwise contend that North Carolina's claims, actions, or proceedings are subject to an automatic stay;

(ii) Dream Smiles shall not plead, argue, or otherwise raise any defenses under the theories of the statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by North Carolina within sixty (60) calendar days of written notification to Dream Smiles that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and

(iii) North Carolina 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. Dream Smiles acknowledges that its agreement in this Paragraph is provided in exchange for valuable consideration provided in this Agreement.

10. Each of the Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Each of the parties and signatories to this Agreement represents that they freely and voluntarily enter into this Agreement without any degree of duress or compulsion.

12. 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.

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

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

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

16. This Agreement is binding on the Parties' successors, transferees, heirs, and assigns.


17. All parties consent to the disclosure by North Carolina or any other disclosure required by law of this Agreement, and information about this Agreement, to the public.

18. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date" of this Agreement). Facsimiles, PDFs, or similar electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

19. If any term or provision of this Agreement is invalid, illegal, or unenforceable, such term or provision shall be excluded and stricken from this Agreement to the extent of such invalidity,

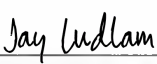
illegality, or unenforceability; all other terms and provisions herein shall remain in full force and effect.

STATE OF NORTH CAROLINA


F. EDWARD KIRBY, JR.
Director, Medicaid Investigations Division
Office of the Attorney General


Dated: 6/9/2023

**NC DEPARTMENT OF HEALTH & HUMAN SERVICES
DIVISION OF HEALTH BENEFITS**

DocuSigned by:

JAY LULLAM
Deputy Secretary, NC Medicaid
NCDHHS/DHB

Dated: 06/11/23 | 1:24 PM EDT

DR. A. KHARA, DMD, PA


AMARDEEP KHARA, DMD, on behalf of
DR. A. KHARA, DMD, PA

Dated: 6/8/23

AMARDEEP KHARA, DMD


AMARDEEP KHARA, DMD, individually

Dated: 6/8/23