

State of North Carolina

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February 13, 2017

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

Senator Warren Daniel
Senator Shirley Randleman
Senator Norman W. Sanderson
Representative James Boles, Jr.
Representative Ted Davis, Jr.
Representative Allen McNeill
Representative Rena W. Turner
Co-Chairs, Appropriations Subcommittee 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 Greater Home Care Agency

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 has been executed between Greater Home Care Agency and the State of North Carolina.

The settlement resolves allegations that from January 1, 2008 through May 1,

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2010, Greater Home Care submitted claims for services that were not rendered to twenty-two different minor recipients. Greater Home Care also submitted claims for the delivery of personal care services for a recipient in violation of Medicaid policy, which prohibits the provision of services by an immediate family member of the recipient.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$150,000.00. Of that amount the federal government will receive \$96,885.00 for North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$48,207.17 as restitution. Pursuant to G.S. §108A-70.12(b)(3) and G.S. §1-608(c), the North Carolina Department of Justice will receive \$4,907.83 for investigative costs.

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

Very truly yours,



Seth Dearmin
Chief of Staff

SD:ng

cc: Kristine Leggett, NCGA Fiscal Research Division

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the North Carolina Office of the Attorney General on behalf of the State of North Carolina ("North Carolina"); Favor Cap Services, Inc. d/b/a Greater Home Care Agency, a North Carolina corporation ("Greater"); and Sharon Melvin ("Melvin"), the owner and manager of Greater for all times relevant to this Agreement. Each of the above are hereafter referred to as "the Parties" through their authorized representatives.

RECITALS

A. Greater provides personal care services to Medicaid recipients, including children, in and around Fayetteville, North Carolina. Greater has been a North Carolina Medicaid Provider since at least 2008. From at least 2008 to current day, Melvin managed Greater's daily operations. As a Medicaid Provider, Greater may submit claims for payment to the North Carolina Medicaid Program for services it rendered to Medicaid recipients per the Medicaid legal authority applicable to the service delivered.

B. North Carolina contends that Greater submitted claims for services that it did not provide to 22 different minor Medicaid recipients from January 1, 2008 through May 1, 2010. The individual Medicaid recipients, along with the dates of service per recipient at issue herein, are identified on **Exhibit A**. In addition, North Carolina contends that Greater submitted claims to the Medicaid Program for the delivery of personal care services to Medicaid Recipient "B.M." in violation of Medicaid policy prohibiting the provision of these services by an immediate family member of the Medicaid recipient. Services were provided to "B.M." in violation of Medicaid policy from January 1, 2008 through November 30, 2012. Lastly, North Carolina contends that Melvin had knowledge that Greater submitted these claims for payment to the North Carolina Medicaid Program and that said submissions violated of the applicable Medicaid legal authority. The conduct referenced in this paragraph is referred to below and throughout this Agreement as the "Covered Conduct."

C. North Carolina contends that Greater's submission of 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.

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 Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Greater and/or Melvin shall pay to North Carolina the aggregate principal amount of one hundred fifty thousand dollars (\$150,000.00) (the "Settlement Amount"), inclusive of any applicable interest, in equal payments for four consecutive years starting on January 31, 2017, and quarterly thereafter. The quarterly payments are due by 5:00 pm U.S. Eastern Standard time on January 31, April 30, July 31, and October 31 until the full payment is received. Each quarterly payment will include at least nine thousand three hundred seventy-five dollars (\$9,375.00). If Greater pays more than the payment required in any quarter, the additional amount paid will be subtracted from the last payment due. Payment may be made by **certified check**, payable to the North Carolina Fund for Medical Assistance and mailed to the Medicaid Investigations Division ("MID"), 5505 Creedmoor Road, Suite 300, Raleigh, NC 27612 ("MID address"), or it may be deposited by electronic funds transfer (instructions to be provided upon request).

2. To provide security as to the entire \$150,000.00 payment, Greater and Melvin shall sign a Confession of Judgment (Pursuant to N.C. Rules Civil Procedure 68) for the amount of \$150,000.00, which may be docketed upon Greater and/or Melvin's failure to timely pay the agreed upon payment amounts reflected herein. Upon any default by Greater or Melvin of the terms contained in Paragraph 1 or any other terms of this Agreement, North Carolina shall have the unconditioned right to accelerate payment and require that the full Settlement Amount then-outstanding be immediately due and payable.

3. If the North Carolina Medicaid Program places Greater on pre-payment review at any time before Greater and/or Melvin have paid this Settlement Amount in full, Greater consents to heightened over-sight of its claims during the pre-payment review process. Specifically, Greater agrees that it will submit at least 50% of its average monthly claims per month it is on pre-payment review. Greater's average monthly claims amount will be derived by adding the total number of claims submitted by Greater in the three months before it was notified by the Division of Medical Assistance or its pre-payment review vendor that it will be placed on pre-payment

review. If, by way of example, Greater had submitted 100 claims a month for the three months before it was notified of its placement on pre-payment review, Greater would need to submit at least 50 claims per month for pre-payment review until it graduated from pre-payment review. Greater also agrees that it will remain on pre-payment review until it meets an 80% clean claims rate. Outside of the number of claims submitted for review and the clean claims rate required to move off of pre-payment review, no other state laws or regulations governing the pre-payment review process are altered by this Agreement.

4. North Carolina understands that Greater may have difficulty paying the quarterly payments in a timely manner if Greater is placed on pre-payment review or its payments are suspended before the Settlement Amount is paid in full. As a result, North Carolina will consent to at least one request for a delay of payment ("Payment Delay") made by Greater and/or Melvin in writing (at the MID address listed above) at least fourteen days (14) before the payment is due. To qualify for the Payment Delay, Greater must be under pre-payment review or payment suspension at the time the payment is due, or within thirty days prior to the payment due date. North Carolina will consent to the first Payment Delay request and may consent to future requests at North Carolina's sole discretion. If Greater and/or Melvin request a Payment Delay, and that Payment Delay is granted or permitted according to the terms of this Agreement, Greater and/or Melvin may delay the payment owed for ONE quarterly payment. Instead of paying the nine thousand three hundred seventy-five dollars (\$9,375.00) owed for that quarter, Greater and/or Melvin may pay any portion thereof. The difference between the amount paid by Greater and/or Melvin and the amount owed for that quarter will either be added to the already scheduled quarterly payments (thereby increasing the quarterly payment owed) or be paid in an additional quarterly payment (thereby extending the payment terms by one quarter). Greater agrees to notify MID in writing of its decision to either increase the quarterly payment amount or add an additional quarterly payment within 30 days before the next scheduled quarterly payment is due.

By way of example, if Greater is notified that it will be placed on pre-payment review in March 2017 and determines that it cannot make its April 1, 2017 quarterly payment, it must notify MID by March 18, 2017 and request a Payment Delay. If this is Greater's first Payment Delay request and Greater pays \$4,000 on April 1, 2017, Greater still owes North Carolina \$5,375 for that quarterly payment. Greater has the option of increasing its quarterly payment to \$9,788.46 for every remaining quarterly payment

(which is \$5,375 divided by the 13 remaining quarterly payments owed plus \$9,375) or adding an additional quarterly payment of \$5,375 (which would come due October 1, 2020, one quarter after the Settlement Amount would have been paid in full absent the Payment Delay request). In this example, Greater must notify MID in writing by June 1, 2017, which repayment method it will choose.

5. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon Greater and/or Melvin's full payment of the Settlement Amount, North Carolina releases Greater and Melvin from 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.

6. In the event that Greater and/or Melvin fail to pay any amount as provided in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, Greater and Melvin shall be in Default of their payment obligations ("Default"). North Carolina will provide written notice of the Default, and Greater and Melvin shall have an opportunity to cure such Default within five (5) business days from the date of the receipt of the notice. Notice of Default will be delivered via certified mail to Greater and Melvin, or to such representative as Greater and Melvin shall designate in advance in writing. If Greater and Melvin fail to cure the Default within five (5) 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).

7. Greater and Melvin hereby consent to a Confession of Judgment, in the event of such Default in the amount of the unpaid balance, and North Carolina, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to Greater or Melvin by any department, agency, or agent of North Carolina at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. Greater and Melvin agree not to contest any offset imposed and not to contest any collection action undertaken by North Carolina pursuant to this Paragraph, either administratively or in any state or federal court. Greater and Melvin shall pay North Carolina all

reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

8. Notwithstanding the releases given in paragraph 5 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 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.

9. Greater and Melvin have provided sworn financial disclosure statements ("Financial Statements") to North Carolina and North Carolina has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Greater and Melvin warrant that the Financial Statements were complete and accurate at the time they were provided to North Carolina. If North Carolina learns of asset(s) in which Greater and/or Melvin had an interest at the time the Financial Statements were provided to North Carolina that were not disclosed in the Financial Statements, or if North Carolina learns of any misrepresentation by Greater and/or Melvin on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$50,000 or more, North Carolina may, at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Greater and/or Melvin's previously undisclosed assets. Greater and/or Melvin agrees not to contest any collection action undertaken by North Carolina pursuant to this provision, and immediately to pay North Carolina all reasonable costs incurred in the collection action, including attorney's fees and expenses.

10. In the event that North Carolina, pursuant to Paragraph 9 (concerning disclosure of assets) above, opts to rescind this Agreement, Greater and Melvin agree not to plead, argue, or

otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by North Carolina within 60 calendar days of written notification to Greater and Melvin that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the date of execution of this Agreement.

11. Greater and Melvin waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that are specifically limited to 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 North Carolina concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. Greater and Melvin fully and finally release 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 Greater and Melvin have 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.

13. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid carrier or intermediary or any state payor, related to the Covered Conduct; and Greater and Melvin agree not to resubmit to any Medicaid carrier or intermediary or any state payor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims related to the Covered Conduct.

14. 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. Greater and Melvin agree 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.

15. Greater and Melvin warrant that they have reviewed their financial situation and that they currently are 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 Greater or Melvin, 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 Greater or Melvin were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Greater or Melvin 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 Greater or Melvin's debts, or seeking to adjudicate Greater or Melvin as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Greater or Melvin or for all or any substantial part of Greater or Melvin's assets, Greater and Melvin agree as follows:

a. Greater and Melvin's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Greater and Melvin shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Greater or Melvin's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Greater or Melvin were 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 Greater or Melvin.

b. If Greater or Melvin'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, 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 Greater and/or Melvin for the claims that would otherwise be covered by the releases provided in Paragraph 5 above. Greater and Melvin agree 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 Greater and Melvin shall not argue or otherwise contend that North Carolina's claims, actions, or proceedings are subject to an automatic stay; (ii) Greater and Melvin 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 North Carolina within sixty (60) calendar days of written notification to Greater and Melvin 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 has a valid claim against Greater and Melvin in the amount of \$150,000.00 or more, and 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. Greater and Melvin acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

17. As provided in 31 U.S.C. § 3730(d)(1) or (2), each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. 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.

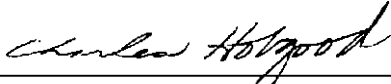
19. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

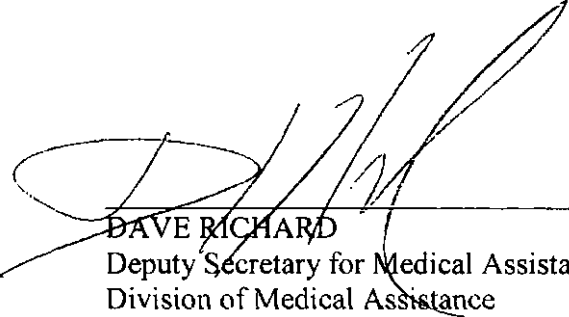
22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
23. This Agreement is binding on the Parties' successors, transferees, heirs, and assigns.
24. All parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.
25. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date" of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

STATE OF NORTH CAROLINA



CHARLES H. HOBGOOD
Director, Medicaid Investigations Division
Office of the Attorney General

Dated: 12/5/2016



DAVE RICHARD
Deputy Secretary for Medical Assistance
Division of Medical Assistance

Dated: 11/28/2016

FAVOR CAP SERVICES, INC. D/B/A GREATER HOME CARE AGENCY

Sharon Melvin

Favor Cap Services, Inc. d/b/a Greater Home Care Agency
by Sharon Melvin
Owner and Manager

Dated: 12/21/16

SHARON MELVIN

Sharon Melvin

Sharon Melvin

Dated: 12/21/16

EXHIBIT A

MEDICAID RECIPIENT INITIALS

1. T.J
2. K.J.
3. R.J.
4. K.H.
5. M.F.
6. L.M.
7. J.S.
8. T.T.
9. D.J.
10. J.C.
11. D.T.
12. B.J.
13. J.A.
14. C.J.
15. R.J.
16. D.J.
17. D.B.
18. C.M.
19. C.M.
20. J.H.
21. T.A.
22. C.M.