

SETTLEMENT AGREEMENT

I. Recitals

1. Parties. The Parties to this Settlement Agreement (Agreement) are the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS), the Medicaid Fraud Control Unit of the State of Alaska (Alaska), and the Arc of Anchorage (Respondent). OIG, Alaska, and Respondent shall hereafter collectively be referred to as the “Parties.”

2. Factual Background and Covered Conduct. Respondent is a non-profit that provides services for individuals with intellectual or developmental disabilities in the greater Anchorage, AK area. Respondent is enrolled as a health care provider in the Alaska Medicaid program, and submits claims for health care items and services.

A. Alaska investigated Respondent for knowingly submitting false or fraudulent claims to the Alaska Medicaid program and for knowingly retaining an overpayment. Based upon that investigation, the OIG and Alaska allege that, during the period January 1, 2012 through December 31, 2016, Respondent knowingly submitted or authorized the submission of claims to the Alaska Medicaid program claims for items or services that Respondent knew or should have known were not provided as claimed and were false or fraudulent. Specifically, Respondent (1) billed for services not provided; (2) billed for individual and group services at the same time with the same servicing provider; and (3) billed for overlapping services with the same servicing provider. OIG and Alaska also allege that, as of November 2015, Respondent knowingly retained an overpayment owed to the Alaska Medicaid program which was identified in audits performed by or at the direction of Respondent. The conduct described in this Paragraph will hereinafter be referred to as the “Covered Conduct”.

B. The OIG contends that the Covered Conduct subjects Respondent to civil monetary penalties, assessments, and exclusion under 42 U.S.C. §§ 1320a-7a and 1320a-7(b)(7).

C. Alaska contends that the Covered Conduct subjects Respondent to civil monetary penalties, assessments, and exclusions under Alaska Statute 09.58.010 and Alaska Statute 47.05.210.

3. No Admission or Concession. This Agreement is neither an admission of liability by Respondent nor a concession by the OIG or Alaska that their claims are not well-founded.

4. Intention of Parties to Effect Settlement. In order to avoid the uncertainty and expense of litigation, the Parties agree to resolve this matter according to the Terms and Conditions below.

II. Terms and Conditions

5. Payment. Respondent agrees to pay to OIG \$ 2,049,392.08 (Remainder of the Settlement Amount). This payment shall be made via wire transfer to the United States Department of Health and Human Services according to written instructions provided by OIG. Respondent shall make full payment no later than three business days after the Effective Date.

6. Release by the OIG. In consideration of the obligations of Respondent under this Agreement and the Corporate Integrity Agreement entered into between OIG and Respondent, and conditioned upon Respondent's full payment of the Remainder of the Settlement Amount, the OIG releases Respondent from any claims or causes of action it may have against Respondent under 42 U.S.C. §§ 1320a-7a and 1320a-7(b)(7) for the Covered Conduct. The OIG and HHS do not agree to waive any rights, obligations, or causes of action other than those specifically referred to in this Paragraph. This release is applicable only to the Respondent and is not applicable in any manner to any other individual, partnership, corporation, or entity.

7. Release by Alaska. In consideration of the obligations of Respondent under this Agreement and the Corporate Integrity Agreement entered into between OIG and Respondent, and conditioned upon Respondent's full payment of the Remainder of the Settlement Amount, Alaska releases Respondent from any claims or causes of action it may have against Respondent under Alaska Statute 09.58.010 and Alaska Statute 47.05.210 for the Covered Conduct. Alaska does not agree to waive any rights, obligations, or causes of action other than those specifically referred to in this Paragraph. This release is applicable only to the Respondent and is not applicable in any manner to any other individual, partnership, corporation, or entity. Nothing in this Paragraph precludes Alaska from taking action against Respondent for conduct not covered by this Agreement, including future review of claims or audits.

8. Agreement by Released Parties. Respondent shall not contest the Remainder of the Settlement Amount or any other term of this Agreement in any federal, state, or administrative forum.

A. Respondent waives all procedural rights granted under the exclusion statute (42 U.S.C. § 1320a-7), the CMPL (42 U.S.C. § 1320a-7a) and related regulations (42 C.F.R. Part 1003), and HHS claims collection regulations (45 C.F.R. Part 30), including, but not limited to, notice, hearing, and appeal with respect to the Remainder of the Settlement Amount.

B. Respondent waives all procedural rights granted under Alaska Administrative Code 7 AAC 160.130.

9. Reservation of Claims. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Respondent) are the following:

- a. Any criminal, civil, or administrative claims 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 United States (or its agencies) or the State of Alaska for any conduct other than the Covered Conduct.
- e. Alaska reserves its authority to collect advance payments provided to Arc by the State of Alaska during the transition to the Medicaid Management Information System (MMIS).
- f. Alaska reserves its authority to exclude Respondent from participation in the Alaska Medicaid program in the event that OIG (1) determines that Respondent has materially breached the Corporate Integrity Agreement entered into between OIG and Respondent, and (2) issues a Notice of Material Breach and Intent to Exclude, as described in Section X.D of the Corporate Integrity Agreement.

10. Binding on Successors. This Agreement is binding on Respondent and its successors, heirs, transferees, and assigns.

11. Costs. 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.

12. No Additional Releases. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity, except as provided in paragraph 14.

13. State Audits. The Remainder of the Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by the Alaska Medicaid program or any Medicaid contractor related to the Covered Conduct; and Respondent agrees not to resubmit to any Alaska payor any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

14. Claims Against Beneficiaries. Respondent waives and shall not seek payment, including copay and deductible amounts, 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.

15. Effect of Agreement. This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement shall be set forth in writing and signed by all Parties. Respondent represents that this Agreement is entered into with advice of counsel and knowledge of the events described herein. Respondent further represents that this Agreement is voluntarily entered into in order to avoid litigation, without any degree of duress or compulsion.

16. Effective Date. The Effective Date of this Agreement shall be the date of signing by the last signatory.

17. Disclosure. Respondent consents to the OIG's and Alaska's disclosure of this Agreement, and information about this Agreement, to the public.

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

19. Authorizations. The individuals signing this Agreement on behalf of the Respondent represent and warrant that they are authorized by Respondent to execute this Agreement. The individuals signing this Agreement on behalf of the OIG represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement. The individuals signing this Agreement on behalf of Alaska represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

RESPONDENT

/Barbara Rodriguez-Rath/
BARBARA RODRIGUEZ-RATH
Chief Executive Officer
The Arc of Anchorage

4/17/18
Date

/Michael J. Khouri/
MICHAEL J. KHOURI
Khouri Law Firm
Attorney for The Arc of Anchorage

4-18-18
Date

FOR THE STATE OF ALASKA

/Jahna Lindemuth/
JAHNA LINDEMUTH
Attorney General
State of Alaska

4/18/2018
Date

**FOR THE OFFICE OF INSPECTOR GENERAL OF
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

/Lisa M. Re/
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

4-23-18
Date

/Katherine Matos/
KATHERINE MATOS
Senior Counsel
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

4-18-18
Date