

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”); Lincare Inc. (hereinafter “Lincare”); and Relators Benjamin Montgomery and Brandon Haugen (hereafter “Relators”); through their authorized representatives. The United States, Lincare, and Relators are hereinafter collectively referred to as “the Parties.”

FACTUAL RECITALS

A. Medicare is a federal health care program operated by the Centers for Medicare & Medicaid Services (CMS), a part of the United States Department of Health and Human Services. Medicare provides health insurance coverage for elderly and disabled Americans for covered items and services. Under what is sometimes called “traditional Medicare,” “Medicare fee-for-service,” or “Medicare Part B,” health care providers such as Lincare directly bill Medicare for each covered item or service by submitting claims to Medicare through a Medicare Administrative Contractor (MAC). Under what is sometimes called “Medicare Advantage” or “Medicare Part C,” private health insurance companies known as Medicare Advantage Organizations (MAOs) or Medicare Advantage Plans (MA Plans) provide health insurance coverage to beneficiaries who elect to receive insurance benefits through Medicare Part C. Under Part C, MAOs receive “capitated” payments per beneficiary per month from Medicare based on factors including prior cost experience and the beneficiary’s specific medical conditions, and in some cases premiums paid by beneficiaries, which they use to provide health insurance coverage. Health care providers such as Lincare submit claims to MAOs, which must provide coverage equal to or greater than that provided under Medicare Part B, but which may charge different out-of-pocket costs and develop their own rules for how beneficiaries access

services.

B. Lincare is a Delaware company and durable medical equipment supply company headquartered in Clearwater, Florida. Lincare provides in-home respiratory care to patients through hundreds of centers located throughout the United States, including in the Eastern District of Washington. Lincare's services include renting and servicing oxygen equipment, including stationary and portable oxygen concentrators and gaseous and liquid oxygen equipment, to patients with respiratory conditions who require oxygen therapy. Lincare bills Medicare for services provided to Medicare beneficiaries covered under Part B, and bills MA Plans for services provided to Medicare beneficiaries covered under Part C. During the relevant time period, Lincare also operated a Regional Billing and Collections Office (RBCO) in Spokane Valley, Washington, to oversee and coordinate billing for Lincare's centers in the Inland Northwest.

C. During the relevant time period, by statute and regulation, Medicare Part B reimbursement for oxygen equipment rented by Lincare and other providers, including stationary and portable oxygen concentrators, high-pressure oxygen tanks, and liquid oxygen equipment (hereinafter "oxygen equipment") was limited to 36 months of continuous use. After 36 months of payments, the equipment supplier was required to continue to lease the equipment to the beneficiary for the remainder of its useful life (defined by regulation to be 5 years), but was not eligible for reimbursement from Medicare for any further lease payments during that time (though it was permitted to bill Medicare for maintenance and service of the equipment and for furnishing oxygen contents for gaseous and liquid). After 36 months of lease payments, the equipment supplier was similarly not permitted to charge the beneficiary any further co-payments associated with rental of the oxygen equipment for the remaining 24 months of the equipment's useful life. After 60 months, Lincare was permitted to replace the equipment, with the consent of the beneficiary, and to resume billing for another 36 months of payments. This 36-month limit

was referred to as the oxygen rental cap.

D. During the relevant time period, for beneficiaries who had elected to receive Medicare benefits through Medicare Part C, each MA Plan's coverage limitations and rules and its contract with Lincare determined whether reimbursement and associated co-pays for oxygen equipment were limited to 36 months of payments and how such limits applied.

E. During the relevant time period, Lincare did not have or implement sufficient safeguards or internal controls to ensure that it did not bill the Medicare Part C insurers that applied an oxygen rental cap and their beneficiaries in excess of applicable limitations once it had reached 36 months of payments. For these MA Plans, Lincare therefore submitted Part C claims for oxygen equipment rental until the MA Plans denied claims as capped, at which time Lincare's internal procedures provided that the cap denial would be manually recorded and billing would be discontinued for that piece of equipment. The claims submitted after 36 months of payments were not reimbursable because they were submitted after 36 prior payments had been made for the equipment. Lincare submitted these claims despite knowing that the MA Plans limited reimbursement to 36 months of payments. Similarly, Lincare improperly charged and collected co-payments from beneficiaries in excess of the 36-month cap.

F. Lincare had additional controls for Medicare Part B. Lincare submitted Part B claims after 36 months of payments, and in many cases, the claims were denied by the MAC. If Medicare paid a claim that should have been denied because there had been 36 months of payments, Lincare's internal controls were intended to identify such payments, and to refund them if they were not recouped by Medicare. When Medicare made more than 36 payments, Lincare's controls were designed to identify any excess payments and refund them to Medicare if they had not been recouped. At times, however, Lincare did not identify the excess payments. Lincare knew that Part B statutes and regulations did not permit more than 36 months of payments.

G. In October 2020, relators, who were then-Lincare employees at a Lincare center in Libby, Montana, raised concerns that Lincare's failure to comply with billing limitations of MA Plans violated the False Claims Act. Lincare personnel in the Spokane Valley RBCO and at Lincare's corporate headquarters in Florida instructed relators that Lincare's nationwide practice was to continue billing MA Plans for each piece of oxygen equipment until MA Plans themselves denied claims for the equipment for the specific beneficiary, at which point Lincare would stop billing for that equipment for that beneficiary.

H. During the relevant time period, MA Plans at times denied Lincare's claims for being in excess of billing restrictions or otherwise notified Lincare that its billing was in excess of the MA Plans' payment limitations. While Lincare would thereafter "cap" that equipment and stop submitting monthly claims for that equipment, Lincare at that time did not take additional steps to identify additional equipment or beneficiaries for which it was improperly billing, or to change its billing practices. Nor did Lincare consistently take action to identify prior overpayments or to refund MA Plans for payments it had previously improperly received for that or other equipment.

I. On May 3, 2021, Relators filed a *qui tam* Complaint pursuant to the False Claims Act in the United States District Court for the Eastern District of Washington, captioned as *United States ex rel. Montgomery et al. v. Lincare Holdings, Inc.*, 2:21-cv-151 (hereinafter the Civil Action). Relators' Complaint alleged that Lincare violated the False Claims Act by improperly claiming payment from MA Plans that apply a 36-month rental cap for oxygen equipment beyond 36 months of payments. On February 3, 2022, as part of its investigation into the allegations raised by Relators' Complaint, the United States issued Civil Investigative Demand No. EDWA-21-024 (hereinafter the CID) to Lincare. On July 5, 2023, the United States intervened in the Civil Action.

J. Since receiving the CID, Lincare has taken steps to address improper billing

beyond 36 months of use. These steps include designing and implementing software to track payments in Lincare's internal billing system to enable it to stop billing for oxygen equipment once it has reached 36 months of payments.

K. Lincare has also undertaken a commitment to make reasonable best efforts to identify beneficiaries of MA Plans that limited reimbursement to 36 months of payments who have been charged and have paid improper co-payments related to the Covered Conduct. Lincare has committed to repay, on a rolling basis, any co-pays it identifies, through its reasonable best efforts, that were previously improperly collected from beneficiaries of such MA Plans, and intends to complete this process within 12 months of the effective date of this Settlement Agreement.

L. The United States contends that it has certain civil claims against Lincare arising from allegedly false and improper claims for payment: (1) submitted by Lincare to MA Plans under Medicare Part C between January 1, 2016 and December 31, 2022 for oxygen equipment rental after 36 months of payments had previously been made; and (2) submitted by Lincare to Medicare Part B between January 1, 2011 and December 31, 2022 for oxygen equipment rental under health care procedure coding system (HCPCS) codes E0434, E0439, E1392, and K0738 after 36 months of payments had previously been made (hereinafter the "Covered Conduct").

M. Lincare admits, acknowledges, and accepts responsibility for the facts and conduct set forth in Recitals A through H, and J through K above are true and accurate. While Lincare admits and agrees with the facts set forth in those Recitals, Lincare does not concede that liability arises from those facts, under the False Claims Act or any other cause of action.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Lincare shall pay to the United States \$29,000,000 (herein “the Settlement Amount”), of which \$12,591,705 is restitution, within seven (7) days by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Eastern District of Washington.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$5,655,000 to Relators by electronic funds transfer (hereafter the “Relators’ Share”).

3. Lincare shall pay \$362,000 to Relators in settlement of Relators’ claims for fees, expenses, and costs under 31 U.S.C. § 3730(d). This payment shall be made within seven (7) days by electronic funds transfer pursuant to written instructions to be provided by the Relators.

4. Subject to the exceptions in Paragraph 8 (concerning reserved claims) below, and conditioned upon Lincare’s full payment of the Settlement Amount, the United States releases Lincare, together with its current and former direct and indirect parent corporations, including, without limitation, Lincare Holdings Inc.; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; dbas; and the corporate successors and assigns of any of them, 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; 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, fraud, and negligent misrepresentation.

5. Subject to the exceptions in Paragraph 8 below, and upon the United States’ receipt of the Settlement Amount and Relators’ receipt of the full amount due under Paragraph 3, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns (collectively, “Releasers”), release Lincare, together with its current and former direct and

indirect parent corporations, including, without limitation, Lincare Holdings Inc.; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; dbas; and the corporate successors and assigns of any of them (collectively, “Releasees”), from any and all federal and state claims, whether disclosed or undisclosed, which Relators have asserted, could have asserted, or may assert now or in the future against any or all the Releasees related to the Civil Action, the Covered Conduct, and Relators’ investigation and prosecution thereof, including but not limited to any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. § 3729, state false claims acts, common law or any other statute creating civil causes of action for relief for conduct alleged in the Civil Action, and any liability to Relator or Relators arising from the filing of the Civil Action.

6. In consideration of the obligations of Lincare in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and Lincare , 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 Lincare 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 this paragraph and in Paragraph 8 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Lincare 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 8, below.

7. Lincare, together with its current and former direct and indirect parent

corporations, including, without limitation, Lincare Holdings Inc.; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; dbas; and the corporate successors and assigns of any of them, release Relators, their heirs, successors, attorneys, agents, and assigns from any and all federal and state claims (including attorneys' fees, costs, and expenses of every kind and however denominated), whether disclosed or undisclosed, which Lincare has asserted, could have asserted, or may assert now or in the future against the Relators, their heirs, successors, attorneys, agents, and assigns, related to or arising from the Covered Conduct, the Civil Action, or the Relators' investigation and prosecution thereof.

8. Notwithstanding the releases given in Paragraphs 4, 5, and 6 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

a. Any criminal, civil, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code) or state revenue codes;

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory exclusion from Federal or State health care programs;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

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

f. Any civil or administrative liability that any person or entity, including Lincare have or may have to the Federal, State or individual consumers or United States program payers under any statute, regulation or rule not expressly covered by the release in this Agreement, including but not limited to, any and all of the following claims: (i) antitrust violations; (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

g. Any liability for expressed or implied warranty claims or other claims for defective

or deficient products and services provided by Lincare;

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

i. Any liability based on a failure to deliver goods or services due; and,

j. Any liability of individuals.

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

10. 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 or Medicaid contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, on the ground that they exceed an applicable 36-month rental cap within the scope of the Covered Conduct; and Lincare agrees not to resubmit to any Medicare or Medicaid contractor or any state payer any claims that were previously denied on the ground that they exceed an applicable 36-month rental cap within the scope of the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

11. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the Relator's Share, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or

the Civil Action.

12. Lincare 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 Lincare or its Companies, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

(2) the United States' audits and civil and criminal investigations of the matters covered by this Agreement;

(3) Lincare's investigation, defense, and corrective actions undertaken in response to the United States' audits and civil and any criminal investigations in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement;

(5) the payment Lincare makes to the United States pursuant to this Agreement; and

(6) the negotiation of, and obligations undertaken pursuant to the CIA to: (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and (ii) prepare and submit reports to the OIG-HHS are unallowable costs for United States contracting purposes and under the Medicare Program, and Medicaid Program (hereinafter referred to as Unallowable Costs). However, nothing in paragraph 12.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Lincare.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for, and Lincare 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 Lincare, or any of its subsidiaries or affiliates to the Medicare and Medicaid Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Lincare further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare fiscal intermediaries, carriers, and/or contractors, and Medicaid fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Lincare, 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. Lincare agrees that the United States, at a minimum, shall be entitled to recoup from Lincare 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 Lincare, or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Lincare, 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 to audit, examine, or re-examine Lincare's books and records to determine that no

Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. Lincare agrees, separate and apart from the Settlement Amount, to use its reasonable best efforts to identify and repay beneficiaries of MA Plans that limited reimbursement of oxygen equipment rental to 36 months of payments who have been improperly charged and have paid co-pays related to the Covered Conduct. Lincare further agrees, separate and apart from the Settlement Amount, to use reasonable best efforts to determine whether, and to what extent, repayments are due to any Medicare Part B beneficiaries for any improperly charged co-pays related to the Covered Conduct, and, if so, to repay those as well.

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, except to the extent provided for in Paragraph (waiver for beneficiaries paragraph), below.

15. Lincare 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 their parents, sponsors, legally responsible individuals, or third party payers based upon the claims defined as Covered Conduct.

16. Except as otherwise expressly provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. Upon receipt of the Settlement Amount, the United States and Relators shall file a Dismissal in the Civil Action, pursuant to Fed. R. Civ. P. 41. Dismissal shall be with prejudice as to Relators. Dismissal shall be with prejudice as to the United States to the extent of the Covered Conduct, and otherwise without prejudice to the United States only.

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

19. 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 Washington. 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 counsel and agency representatives 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 Lincare's and Relators' successors, transferees, heirs, and assigns.


24. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

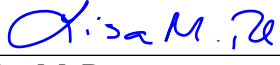
25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 8/10/2023 BY: 
Dan Fruchter
Assistant United States Attorney
Eastern District of Washington

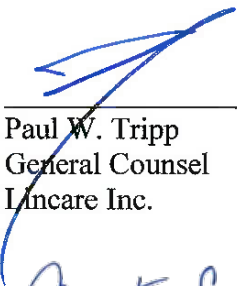
DATED: 8/10/2023 BY: 
Tyler H.L. Tornabene
Assistant United States Attorney
Eastern District of Washington

DATED: 8/10/2023 BY: 
Frieda K. Zimmerman
Assistant United States Attorney
Eastern District of Washington

DATED: 8/10/2023 BY: 
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

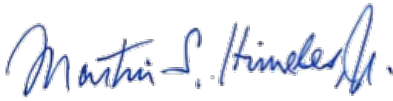
LINCARE

DATED: 8/9/23

BY: 

Paul W. Tripp
General Counsel
Lincare Inc.

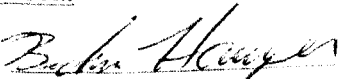
DATED: 8/9/2023

BY: 


Martin S. Himeles, Jr.
Zuckerman Spaeder LLP
Counsel for Lincare Inc.

RELATORS

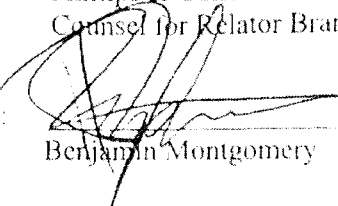
DATED: 7-27-23

BY: 
Brandon Haugen


DATED: 7-27-2023

BY: 
Edward Arens
Phillips & Cohen LLP
Counsel for Relator Brandon Haugen

DATED: 7/27/23

BY: 
Benjamin Montgomery

DATED: 7-27-2023

BY: 
Edward Arens
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