

## 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 New York, acting through the New York State Attorney General, Medicaid Fraud Control Unit (“New York”), and Andover Subacute and Rehab Center Services Two, Inc. (“Andover”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Andover is a skilled nursing facility that provides skilled nursing services to Medicare and Medicaid beneficiaries at its facility located in Andover, New Jersey.

B. The United States and New York contend that Andover submitted or caused to be submitted claims for payment to the Medicaid Program (“Medicaid”), 42 U.S.C. §§ 1396-1396w-5, and N.Y. Soc. Serv. Title 11 §§ 363, *et seq.*

C. The United States and New York contend that they have certain civil claims against Andover arising from Andover billing the New York Medicaid program for nursing services provided to certain patients that were materially substandard and/or worthless because Andover failed to provide care to these patients that met federal standards of care and federal statutory and regulatory requirements during the period from July 1, 2010, to December 31, 2012. These patients are identified in a letter dated May 31, 2017, from Assistant U.S. Attorney Charles Graybow to Craig Goodstadt, Esq., counsel for Andover, which this Agreement incorporates by reference (the “Covered Patients”). This conduct relating to the Covered Patients is hereafter referred to as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by Andover nor a concession by the United States or New York that their 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 agree and covenant as follows:

TERMS AND CONDITIONS

1. Andover shall pay the following sums plus interest at a rate of 2.375% from December 30, 2016 (“Interest”) no later than ten business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey and the Office of the Attorney General for the State of New York: (a) three hundred and ninety-five thousand, five hundred and eight dollars (\$395,508) to the United States, and (b) four hundred and ninety-two thousand, four hundred and ninety-two dollars (\$492,492) to New York. The total of these sums (\$888,000) shall hereafter be referred to as the “Settlement Amount,” and the Settlement Amount plus Interest as described above shall hereafter be referred to as the “Settlement Proceeds.”

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Andover’s full payment of the Settlement Proceeds, the United States releases Andover 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 Andover’s full payment of the Settlement Proceeds, New York releases

Andover from any civil monetary claim New York has for the Covered Conduct under the New York False Claims Act, N.Y. State Fin. §§ 187 et seq., Executive Law § 63(12), Social Services Law § 145(b), or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. In consideration of the obligations of Andover in this Agreement and the Corporate Integrity Agreement (“CIA”), entered into between OIG-HHS and Andover, and conditioned upon Andover’s full payment of the Settlement Proceeds, the OIG-HHS agrees to 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 Andover under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), 42 U.S.C. § 1320a-7(b)(6)(B) (permissive exclusion for provision of items or services failing to meet professionally recognized standards of care), 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 5 (concerning excluded claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Andover 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 5, below.

5. Notwithstanding the releases given in paragraphs 2, 3, and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States and New York are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) and New York Tax Law;
- 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 and New York (or their agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Andover waives and shall not assert any defenses Andover 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 United States or New York concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code and New York Tax Law.

7. Andover 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 Andover 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.

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

9. 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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, including New York Medicaid, related to the Covered Conduct; and Andover agrees not to resubmit to any Medicare contractor or any state payer, including the New York Medicaid program, 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.

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

- (1) the matters covered by this Agreement;
- (2) the United States and New York's audit(s) and civil investigation(s) of the matters covered by this Agreement;

- (3) Andover's investigation, defense, and corrective actions undertaken in response to the United States and New York's 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;
- (5) the payment Andover makes to the United States and New York pursuant to this Agreement; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to: (i) retain an independent monitor 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 government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in paragraph 10.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 Andover.

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

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

11. Andover agrees to cooperate fully and truthfully with the United States and New York's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Andover shall encourage, and agrees not to impair, the cooperation of its directors,

officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Andover further agrees to furnish to the United States and/or New York, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

12. 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 13 (waiver for beneficiaries paragraph), below.

13. Andover 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 payors based upon the claims defined as Covered Conduct.

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

15. 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.

16. 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 District of New Jersey. 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.



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

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

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

20. This Agreement is binding on Andover's successors, transferees, heirs, and assigns.

21. All parties consent to the United States and New York's disclosure of this Agreement, and information about this Agreement, to the public.

22. 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: 5/30/17

BY: Brett O. Elliott  
BRETT ELLIOTT  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

WILLIAM E. FITZPATRICK  
Acting U.S. Attorney

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
CHARLES GRAYBOW  
Assistant United States Attorney  
District of New Jersey

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
JACOB T. ELBERG  
Chief, Health Care and Government Fraud Unit  
United States Attorney's Office  
District of New Jersey

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

BRETT ELLIOTT  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

WILLIAM E. FITZPATRICK  
Acting U.S. Attorney

DATED: 5/31/17

BY: Charles Graybow

CHARLES GRAYBOW  
Assistant United States Attorney  
District of New Jersey

DATED: 5/31/17

BY: [Signature]

JACOB T. ELBERG  
Chief, Health Care and Government Fraud Unit  
United States Attorney's Office  
District of New Jersey

THE UNITED STATES OF AMERICA

DATED: 5/31/17

BY:

Lisa M. Re

LISA M. RE

Assistant Inspector General for Legal Affairs

Office of Counsel to the Inspector General

Office of Inspector General

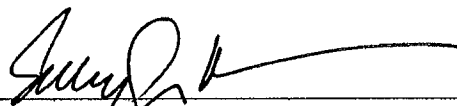
United States Department of Health and Human Services

THE STATE OF NEW YORK


ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York

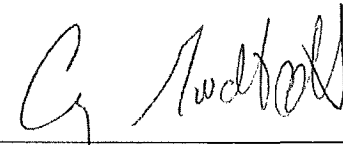
DATED: 5-30-17

BY:

  
\_\_\_\_\_  
SALLY BLINKEN  
Special Assistant Attorney General  
Medicaid Fraud Control Unit

ANDOVER SUBACUTE AND REHAB CENTER SERVICES TWO, INC.

DATED: 5/31/17 BY:   
CARLA TURCO KIPIANI  
President  
Andover Subacute and Rehab Center Services Two, Inc.

DATED: 5/31/17 BY:   
CRAIG M. GOODSTADT, Esq.  
General Counsel & Compliance Officer  
Andover Subacute and Rehab Center Services Two, Inc.  
525 Riverside Avenue  
Lyndhurst, NJ 07071