



**JOSH STEIN**  
**ATTORNEY GENERAL**

**STATE OF NORTH CAROLINA**  
**DEPARTMENT OF JUSTICE**

**SETH DEARMIN**  
**CHIEF OF STAFF**

July 9, 2020

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 Danny Earl Britt, Jr.  
Senator Warren Daniel  
Senator Norman W. Sanderson  
Representative James Boles, Jr.  
Representative Ted Davis, Jr.  
Representative Allen McNeill  
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 Tuong  
Nguyen/Central Carolina Medical Clinic

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 Nguyen/Central Carolina Medical Clinic and the State of North Carolina.

The settlement resolves allegations that from January 1, 2015 through October 28, 2019, Nguyen/Central Carolina Medical Clinic billed for services that were medically unnecessary, had no supporting clinical documentation and were provided in violation of Division of Health Benefits Clinical Coverage policy.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$135,000. Of that amount the federal government will receive \$76,680.00 for North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$54,686.66 as restitution. Pursuant to G.S. § 1-608(c), the North Carolina Department of Justice will receive \$3,633.34 for investigative costs and costs of collection.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Seth Dearmin', with a long horizontal flourish extending to the right.

Seth Dearmin  
Chief of Staff

SD:ng

cc: John Poteat, NCGA Fiscal Research Division

## **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 both Thao Nguyen, M.D., and Central Carolina Medical Clinic, P.A., a North Carolina corporation (hereinafter referred collectively as “Central Carolina Medical Clinic”), each of whom are North Carolina Medicaid Providers. Each of the above are hereafter referred to as “the Parties” through their authorized representative.

### **RECITALS**

A. Central Carolina Medical Clinic was a Medicaid Provider since 2009 and provides general practice and family medicine services to Medicaid beneficiaries in and around Charlotte-Mecklenburg County, 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 Central Carolina Medical Clinic arising from the following conduct, during the dates of January 1, 2015 through October 28, 2019, for Central Carolina Medical Clinic’s submission of claims to the North Carolina Medicaid Program for medical services, to wit, as follows:

(1) CPT 99215 – (Office or other outpatient visit for evaluation and management of an established patient, which requires at least 2 of these 3 key components; (a) A comprehensive history; (b) A comprehensive examination; and (c) Medical decision making of high complexity), which the State contends had no supporting clinical documentation, were not necessary and which were performed in violation of Division of Health Benefits Clinical Coverage Policy, and;

(2) CPT 99354 – (Prolonged evaluation and management or psychotherapy service(s) beyond the typical service time of the primary procedure) in the office or other outpatient setting requiring direct patient contact beyond the usual service, which the State contends had no

supporting clinical documentation, were not medically necessary and which 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 Central Carolina Medical Clinic’s 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. Central Carolina Medical Clinic deny the allegations in Paragraphs A. and B.

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. Central Carolina Medical Clinic, P.A., shall pay to North Carolina the aggregate principal amount of one hundred thirty five thousand dollars (\$135,000.00) (the “Settlement Amount”), all of which is restitution. No later than 20 days following the Effective Date of this Agreement, Central Carolina Medical Clinic shall pay \$135,000.00 to be credited by the Government towards the Settlement Amount. Said payment shall be made by **certified check**, payable to the North Carolina Fund for Medical Assistance and **hand delivered** to the Medicaid Investigations Division (“MID”), 5505 Creedmoor Road, Suite 300, Raleigh, NC 27612 (“MID address”).

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Central Carolina Medical Clinic’s full payment of the Settlement Amount, North

Carolina releases Thao Nguyen, M.D., and Central Carolina Medical Clinic, P.A., 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.

3. In the event that Central Carolina Medical Clinic 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, Central Carolina Medical Clinic shall be in Default of their payment obligations (“Default”). North Carolina will provide written notice of the Default, and Central Carolina Medical Clinic 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 Central Carolina Medical Clinic, P.A., or to such other representative as Central Carolina Medical Clinic shall designate in advance in writing. If Central Carolina Medical Clinic 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 Thao Nguyen, M.D., and/or Central Carolina Medical Clinic, P.A., 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.

5. Central Carolina Medical Clinic waives and shall not assert any defenses it 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, Central Carolina Medical Clinic retains and reserves their rights to assert any other defenses in any criminal prosecution or administrative action that might be brought.

6. Central Carolina Medical Clinic 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 Central Carolina Medical Clinic 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.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment and which now 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 Central Carolina Medical Clinic 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.

8. 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. Central Carolina Medical Clinic agrees that it waives 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.

9. Thao Nguyen, M.D., and Central Carolina Medical Clinic, P.A., warrant that they have each reviewed their 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 Thao Nguyen, M.D., and Central Carolina Medical Clinic 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 which either Thao Nguyen, M.D., or Central Carolina Medical Clinic was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

10. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, either Thao Nguyen, M.D., and/or Central Carolina Medical Clinic, P.A., 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 either Thao Nguyen, M.D., and/or Central Carolina Medical Clinic's debts, or seeking to adjudicate Thao Nguyen, M.D., and/or Central Carolina Medical Clinic as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Thao Nguyen, M.D., and/or Central Carolina Medical Clinic, or for all or any substantial part of Thao Nguyen, M.D., and/or Central Carolina Medical Clinic's assets, Thao Nguyen, M.D., and Central Carolina Medical Clinic agree as follows:

a. Thao Nguyen, M.D. and/or Central Carolina Medical Clinic's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and both Thao Nguyen, M.D., and Central Carolina Medical Clinic, shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Thao Nguyen, M.D. and/or Central Carolina Medical Clinic's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Thao Nguyen, M.D., and/or Central Carolina Medical Clinic 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 Thao Nguyen, M.D., or Central Carolina Medical Clinic.

b. If Thao Nguyen, M.D., and/or Central Carolina Medical Clinic'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 Thao Nguyen, M.D., and/or Central Carolina Medical Clinic for the claims that would otherwise be covered by the releases provided in Paragraph 5 above. Thao Nguyen,



M.D., and Central Carolina Medical Clinic 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 neither Thao Nguyen, M.D., nor Central Carolina Medical Clinic shall argue or otherwise contend that North Carolina's claims, actions, or proceedings are subject to an automatic stay; (ii) Thao Nguyen, M.D. and Central Carolina Medical Clinic 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 Thao Nguyen, M.D., and/or Central Carolina Medical Clinic, 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. Thao Nguyen, M.D., and Central Carolina Medical Clinic acknowledge that its agreement in this Paragraph is provided in exchange for valuable consideration provided in this Agreement.

11. 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.

12. Each of the parties and signatory to this Agreement represents that they freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

13. 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.

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

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

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

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

18. 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.

19. 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.

**STATE OF NORTH CAROLINA**



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

Dated: June 15, 2020

**THAO NGUYEN, M.D.**

\_\_\_\_\_  
THAO NGUYEN, M.D., as  
an individual

Dated: \_\_\_\_\_

**CENTRAL CAROLINA MEDICAL CLINIC, P.A.**

\_\_\_\_\_  
THAO NGUYEN, M.D., and  
CENTRAL CAROLINA MEDICAL CLINIC, P.A., both as  
an individual and as an owner


Dated: \_\_\_\_\_

**STATE OF NORTH CAROLINA**

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

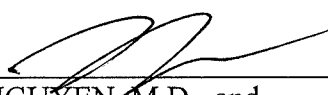
Dated: \_\_\_\_\_

**THAO NGUYEN, M.D.**

  
\_\_\_\_\_  
THAO NGUYEN, M.D., as  
an individual

Dated: 6/3/2020

**CENTRAL CAROLINA MEDICAL CLINIC, P.A.**

  
\_\_\_\_\_  
THAO NGUYEN, M.D., and  
CENTRAL CAROLINA MEDICAL CLINIC, P.A., both as  
an individual and as an owner

Dated: 6/3/2020