



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

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

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

April 30, 2018

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 Carlos Privette, D.D.S.

Dear Members:

Section 114-2.5 of the North Carolina General Statutes requires the Attorney General to report to the Joint Committee 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 Carlos Privette, D.D.S. and the State of North Carolina.

The settlement resolves allegations that from January 1, 2012 through June 9, 2017, Privette billed for inhalation of nitrous oxide/anoxiolysis, analgesia, full mouth debridement to enable comprehensive evaluation and diagnosis, limited oral evaluation – problem focused, removal of impacted tooth – completely bony, with unusual surgical complications,

comprehensive oral evaluation – new or established patient, removal of impacted tooth – completely bony, and removal of residual tooth roots which were medically unnecessary and had no supporting clinical documentation.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$474,880.00. Of that amount the federal government will receive \$309,871.00 for North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$79,956.48 as restitution and interest. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$79,095.72 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to G.S. § 115C-457.2 and G.S. § 1-608(c), the North Carolina Department of Justice will receive \$5,956.80 for investigative costs and costs of collection.

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: John Poteat, 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") and Carlos J. Privette, D.D.S, and Dr. Privette & Associates, P.A., a North Carolina corporation (hereinafter referred collectively as "Privette"), North Carolina Medicaid Providers. Each of the above are hereafter referred to as "the Parties" through their authorized representative.

### **RECITALS**

A. Carlos J. Privette, D.D.S. has been a Medicaid Provider since at least 2013 and provides general dentistry services to Medicaid beneficiaries in and around Wake 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. The State contends that it has certain civil claims against Privette arising from the following conduct, during the dates of January 1, 2012 through June 9, 2017, for Privette's submission of claims to the North Carolina Medicaid Program for dental services, to wit, as follows:

(1) CDT D9230 ("Inhalation of nitrous oxide/anxiolysis, analgesia"), which the State contends had no supporting clinical documentation, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 4A, et seq.;

(2) CDT D4355 ("Full mouth debridement to enable comprehensive evaluation and diagnosis"), which the State contends had no supporting clinical documentation, were



not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 4A, et seq.;

(3) CDT D0140 (“Limited oral evaluation - problem focused”), which the State contends had no supporting clinical documentation, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 4A, et seq.;

(4) CDT D7241 (“Removal of impacted tooth – completely bony, with unusual surgical complications”), which the State contends had no supporting clinical documentation, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 4A, et seq.:

(5) CDT D0150 (“Comprehensive oral evaluation – new or established patient”), which the State contends had no supporting clinical documentation, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 4A, et seq.;

(6) CDT D7240 (“Removal of impacted tooth – completely bony”), which the State contends had no supporting clinical documentation, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 4A, et seq.: and;

(7) CDT D7250 (“Removal of residual tooth roots (cutting procedure), which the State contends had no supporting clinical documentation, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 4A, et seq.

The conduct referenced in this paragraph is referred below and throughout this Agreement as the “Covered Conduct.”

B. North Carolina contends that Privette'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. Carlos J. Privette, D.D.S., denies 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 Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. Carlos J. Privette, D.D.S., and Dr. Privette and Associates, P.A., shall pay to North Carolina the aggregate principal amount of four hundred seventy thousand dollars (\$470,000.00) (the "Settlement Amount") It is agreed upon between the parties that two hundred thirty five thousand (\$235,000.00) dollars of the aforementioned amount will be deemed restitution. No later than 30 days following the Effective Date of this Agreement, Privette shall pay \$235,000.00 to be credited by the Government towards the Settlement Amount. Thereafter Privette shall make payment in the amount of forty seven thousand (\$47,000.00) dollars plus interest every ninety (90) days for a period of time not to exceed August 25, 2019. The schedule of payments plus interest is attached hereto as Exhibit A. At any time prior to 5:00 pm U.S. Eastern time on August 25, 2019, Privette may pay the remaining outstanding balance of said Settlement Amount, plus interest, without any further penalty. 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"). Privette shall make payments as set forth above, until all remaining outstanding settlement monies are paid in full, transfer to be credited by the Government toward the Settlement Amount (or if on a weekend or holiday, the next United States business day) (each such day, a "Payment Date") pursuant to the schedule referenced above until the remaining Settlement Amount is paid in full, (unless the number of payments, final payment date or final payment amount is reduced or the final payment date accelerated by the provisions of this Paragraph 1); (c) to provide security as to the entire \$470,000.00 payment, Privette shall sign a Consent Judgment (Pursuant to Fed. Rules Civil Procedure 68) for the amount of \$470,000.00 plus interest which may be docketed upon his failure to timely pay the agreed upon payment amounts is reflected herein and his failure to cure such non-payment within 30 days;. Interest payable to the Government shall accrue at an annual rate of 2.75%, and on each Payment Date all interest, computed as 90 days (or, if the first payment, since the Effective Date)/365 (or, 366 during a calendar "leap" year) times 470,000.00 times .0275, shall be deemed immediately due and payable. Prepayment of any portion of the Settlement Amount is allowed. Interest, as computed by the provisions of Paragraph 1, shall also be due and payable on the date of any pre-payment. Upon any default by Privette of the terms contained in Paragraph 1 or any other terms of this Agreement, the Government shall have the unconditioned right to accelerate payment and require that the full Settlement Amount then-outstanding be immediately due and payable.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Privette's full payment of the Settlement Amount, North Carolina releases Carlos J. Privette, D.D.S., and Dr. Privette & Associates, 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 Privette 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, Privette shall be in Default of their payment obligations ("Default"). North Carolina will provide written notice of the Default, and Privette 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 counsel for Carlos J. Privette, D.D.S., or to such other representative as Privette shall designate in advance in writing. If Privette fails 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). In the event of a Default, the State may, in its sole discretion, choose to set aside the settlement agreement and bring an action against Carlos J. Privette, D.D.S., and/or Dr. Privette & Associates, 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. Privette waives and shall not assert any defenses he may have to any criminal prosecution or administrative action relating to the Covered Conduct that is specifically limited to any defenses which contend 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.

6. Privette 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 Privette 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 Privette 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. Privette agrees 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.

9. Privette warrants that he has reviewed his financial situation and that he is 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 Privette 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 Privette 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, Privette 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 Privette's debts, or seeking to adjudicate Privette as

bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Privette or for all or any substantial part of Privette's assets, Privette agrees as follows:

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

b. If Carlos J. Privette, D.D.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 Carlos J. Privette, D.D.S. for the claims that would otherwise be covered by the releases provided in Paragraph 5 above. Carlos J. Privette, D.D.S agrees 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 Carlos J. Privette, D.D.S. shall not argue or otherwise contend that North Carolina's claims, actions, or proceedings are subject to an automatic stay; (ii) Carlos J. Privette, D.D.S. 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 Carlos J. Privette, D.D.S. 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. Carlos J. Privette, D.D.S., acknowledges that its agreement in this Paragraph is provided in exchange for valuable consideration provided in this Agreement.

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

12. 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.

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.



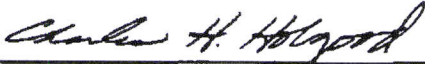
16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

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.

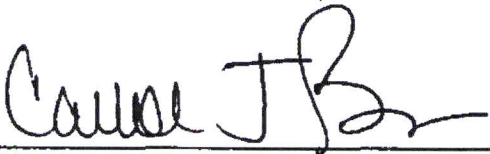
19. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date" of this Agreement). Facsimiles, PDFs or similar electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

STATE OF NORTH CAROLINA

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

Dated: 4/17/2018

**CARLOS J. PRIVETTE, D.D.S. AND DR. PRIVETTE & ASSOCIATES, P.A.**

  
\_\_\_\_\_  
CARLOS J. PRIVETTE, D.D.S., and  
DR. PRIVETTE & ASSOCIATES, both as an individual  
and as an owner

Dated: 4/17/18

