



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 Sassan Bassiri, 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 Sassan Bassiri, D.D.S. and the State of North Carolina.

The settlement resolves allegations that from December 1, 2003 through December 31, 2009, Bassiri submitted claims for payment using CDT code D0160 when other lesser codes should have been used.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$170,617.16. Of that amount the federal government will receive \$109,281.19 for North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$57,617.54 as restitution and interest. Pursuant to G.S. § 1-608(c), the North Carolina Department of Justice will receive \$3,718.43 for investigative costs.

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 between the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the Department of Health and Human Services (OIG-HHS) (collectively, the "United States") and the North Carolina Office of the Attorney General (North Carolina) and Sassan Bassiri (Bassiri) (hereinafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Bassiri is an individual residing within the Middle District of North Carolina. At all times relevant to the Covered Conduct, as specified in Paragraph C below, Bassiri was a dentist licensed by the State of North Carolina.

B. The United States and North Carolina contend that Bassiri submitted or caused to be submitted claims for payment to the North Carolina Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, in violation of the False Claims Act, 31 U.S.C. §§ 3729-3733; 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. The United States and North Carolina contend that from December 1, 2003 to December 31, 2009, Bassiri submitted or caused to be submitted claims for payment using Current Dental Terminology (CDT) Code D0160 to the Medicaid Program when other lesser codes would have been more appropriate. The United States and North Carolina have certain civil claims against Bassiri arising from the submission of these claims and that conduct is referred to below as the "Covered Conduct."

D. This Settlement Agreement is neither an admission of liability by Bassiri, nor a concession by the United States and the State of North Carolina 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. Bassiri shall pay to the United States the amount of One Hundred Sixty-Seven Thousand (\$167,000.00) Dollars ("Settlement Amount") plus interest on the Settlement Amount in the amount of two and three-quarters (2.75%) percent, compounded annually, as follows:

a. One thousand (\$1,000.00) Dollars no later than twenty (20) days after the Effective Date of this Agreement (as defined in Paragraph 22 herein);

b. The remaining One Hundred Sixty-Six Thousand (\$166,000.00) Dollars shall be paid by Bassiri as follows: One Thousand (\$1,000.00) Dollars, beginning on the first day of the month following the Effective Date of this Agreement and continuing each month thereafter on the first day of each month, for a period of fifty-nine (59) months (for a total of sixty (60) months); and

c. The final payment in the amount of One Hundred Seven Thousand (\$107,000.00) Dollars, plus the remaining interest on the Settlement Amount due, shall be paid on or before the 15th day of the month following the last monthly payment set out in sub-paragraph b above.

d. Prepayment of any portion of the Settlement Amount is allowed without penalties.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Bassiri's full payment of the Settlement Amount, the United States releases Bassiri and his successors and assigns 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 4 (concerning excluded claims) below, and conditioned upon Bassiri's full payment of the Settlement Amount, North Carolina releases Bassiri 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.; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Notwithstanding the releases given in Paragraphs 2 and 3 above, or any other term or condition of this

Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion, from Federal 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 liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due; and

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

5. Notwithstanding the releases given in paragraphs 2 and 3 above, or any other term or condition of this Agreement, the following claims of North Carolina are specifically reserved and are not released:

a. Any criminal, civil, or administrative liability arising under state revenue codes;

b. Any criminal liability not specifically released by this Agreement;

c. Any civil or administrative liability that any person or entity has or may have to North Carolina or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the above releases, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

d. Any liability to North Carolina for any conduct other than the Covered Conduct;

e. Any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the North Carolina's Medicaid program on a capitated basis;

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

g. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services by Bassiri;

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

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

6. Bassiri fully and finally releases the United States and North Carolina, their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and

however denominated) that Bassiri has asserted, could have asserted, or may assert in the future against the United States and North Carolina, their agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States and North Carolina's investigation and prosecution thereof.

7. In the event that Bassiri fails to pay any of the payments upon the date such payment is due, as provided in Paragraph 1 above, Bassiri shall be in Default of his payment obligations (Default). The United States will provide written notice of the Default, and Bassiri 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 to Bassiri or to such representative as Bassiri shall designate in advance in writing. If Bassiri 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).

Should Bassiri fail to make the \$167,000.00 payment, as set out in Paragraph 1 above, the United States, at its sole option, may:

a. offset the remaining unpaid balance from any amounts due and owing to Bassiri by any department, agency, or agent of the United States and/or North Carolina at the time of the Default; and/or

b. exercise any other rights granted by law or in equity, including the option of referring such matters for private collection.

8. Notwithstanding the foregoing, in the event of Default as defined in Paragraph 7 above, OIG-HHS has a separate independent basis to exclude Bassiri from participating in all Federal health care programs until Bassiri pays the Settlement Amount and reasonable costs incurred as a result of his Default, as set forth in Paragraph 6 above. This is in addition to Bassiri's current exclusion. In the event of Default, OIG-HHS will provide written notice of any such exclusion for Default to Bassiri. Bassiri waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7). Reinstatement to program participation is not automatic. If at the end of the period

of exclusion Bassiri wishes to apply for reinstatement, Bassiri must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-3005. Bassiri will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

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, or Carrier), Medicaid or any state payer, related to the Covered Conduct; and Bassiri agrees not to resubmit to any Medicare contractor, Medicaid or state payer any previously denied claims related to the Covered Conduct and agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

10. Bassiri 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 Bassiri and his employees and agents in connection with:

(1) the matters covered by this Agreement;

(2) the United States and North Carolina's audit(s) and civil and criminal investigations of the matters covered by this Agreement;

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

(4) the negotiation and performance of this Agreement and any Plea Agreement; and

(5) the payments that Bassiri makes to the Government pursuant to this Agreement,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, Federal Employee Health Benefits Program (FEHBP) and any other federal government programs (hereinafter referred to as 'Unallowable Costs').

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not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Bassiri and shall request

information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Bassiri agrees that the United States and North Carolina, at a minimum, shall be entitled to recoup from Bassiri 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 and North Carolina reserve their rights to disagree with any calculations submitted by Bassiri on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Bassiri or any of his cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States and North Carolina to audit, examine, or re-examine Bassiri's books and records to determine that no Unallowable

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

11. 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 12 (waiver for beneficiaries paragraph) below.

12. Bassiri agrees that he will waive 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.

13. Bassiri warrants that he has reviewed his financial situation and that it currently is 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 after payment to the United States 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 Bassiri, within the meaning of 11 U.S.C. § 547(c) (1), and (b) conclude that these mutual promises, covenants, and obligations do, 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 Bassiri was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a) (1).

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 Government. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Middle District of North Carolina. For purposes of construing this Agreement, this Agreement

shall be deemed to have been drafted by the 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 constitute an original and all of which constitute one and the same Agreement.

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

21. All Parties consent to the United States and North Carolina'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

Ripley Rand
UNITED STATES ATTORNEY

DATED: 9.26.16

BY: Cheryl J. Sloan
Cheryl J. Sloan
Assistant U.S. Attorney
Middle District
of North Carolina

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

DATED: 9/21/16 BY: Robert K. DeConti
ROBERT K. DECONTI
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 NORTH CAROLINA

DATED: 4/1/2016 BY: Charles H. Hobbgood
CHARLES H. HOBGOOD
Special Deputy Attorney General
Director, North Carolina
Medicaid Investigations Division

Sassan Bassiri

DATED: 07-26-2016 BY: Sassan Bassiri
Sassan Bassiri

DATED: 7/24/16 BY: D. J. O'Brien, III
D. J. O'Brien, III
Attorney for Sassan Bassiri