



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

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

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

June 1, 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 Atlanticare Home Care Agency, Inc.

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 Atlanticare and the State of North Carolina.

The settlement resolves allegations that from March 1, 2011 through November 20, 2015, Atlanticare failed to check the Health Care Personnel Registry to verify aide qualifications. As a result, improperly qualified aides provided services. Atlanticare failed to maintain patient records supporting the level of aide services required by patients. Atlanticare also produced

falsified documents in response to a Division of Medical Assistance request for Nurse Aide Registry check verifications and paid recruiters to recruit patients to its home care business.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$325,000.00. Of that amount the federal government will receive \$213,102.50 for North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$48,911.79 as restitution. 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 \$59,013.24 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 \$3,972.47 for investigative costs and costs of collection. We will be happy to respond to any questions you may have regarding this report.

Sincerely,



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"); Atlanticare Home Care Agency, Inc., a North Carolina corporation ("Atlanticare"); and Elbert Joseph Moore ("Moore"), the President and Owner of Atlanticare for all times relevant to this Agreement. Each of the above-referenced parties are hereinafter referred to as "the Parties" throughout this Agreement.

### **RECITALS**

A. Atlanticare provided home care services to Medicaid recipients in and around Greenville, North Carolina. Atlanticare was a North Carolina Medicaid Provider and as President and Owner of Atlanticare, Moore managed Atlanticare's operations during the time period from at least March 1, 2011 through November 20, 2015. As a Medicaid Provider, Atlanticare submitted claims for payment to the North Carolina Medicaid Program for services it rendered to Medicaid recipients per the Medicaid legal authority applicable to the service delivered.

B. North Carolina contends that Atlanticare and Moore knowingly submitted false claims for approval to the Medicaid program, or made, used, or caused to be made or used a false record or statement material to a false or fraudulent claim for payment to the Medicaid program through the following:

1. North Carolina contends that Atlanticare failed to check the Health Care Personnel Registry, also referred to as the Nurse Aide Registry ("Registry"), to verify aide qualifications during the course of aides' employments, and failed to maintain patient records supporting the level of aide services required by patients. As a result, North Carolina contends that improperly qualified aides provided services to at least 4 Medicaid recipients ("A.A." "S.R.", "A.W.", and "P.N.") from January 2009 through June 2011, and patient records were not maintained for patient "C.O." to support his aide service level requirements between January 1, 2015 and December 31, 2015. North Carolina contends that Moore had knowledge that Atlanticare submitted these claims for payment to the North Carolina Medicaid Program and that said submissions violated the applicable Medicaid

legal authority.

2. North Carolina contends that Atlanticare produced falsified documents in response to the Division of Medicaid Assistance's ("DMA"s) request for Nurse Aide Registry check verifications. North Carolina contends that Atlanticare submitted falsified Registry checks to DMA on August 4, 2015 and August 20, 2015.
  3. North Carolina also contends that Atlanticare paid recruiters to recruit patients to its home care business in violation of Medicaid Policy. North Carolina contends that patients were recruited from at least May 14, 2011 through October 4, 2011. North Carolina contends that Moore had knowledge that Atlanticare recruited patients in violation of Medicaid policy.
- C. The conduct referenced in paragraph B is referred to below and throughout this Agreement as the "Covered Conduct."
- D. North Carolina contends that the single damages attributable to the Covered Conduct is approximately \$151,500.00.
- E. North Carolina contends that Atlanticare's submission of 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.
- F. Atlanticare and Moore dispute that they submitted false claims for approval to the Medicaid program, or made, used, or caused to be made or used a false record or statement material to a false or fraudulent claim for payment to the Medicaid program. However, in order 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. Atlanticare and/or Moore agree to pay the State of North Carolina the sum of three hundred twenty-five thousand dollars (\$325,000.00) (the "Settlement Amount"), no later than 45 days after the Effective Date of this Agreement. Payment may be made by certified check, payable to the North Carolina Fund for Medical Assistance and mailed to the Medicaid

Investigations Division ("MID"), 5505 Creedmoor Road, Suite 300, Raleigh, NC 27612 ("MID address").

2. Subject to the exceptions in this Agreement, and conditioned upon Atlanticare and/or Moore's full payment of the Settlement Amount, North Carolina hereby releases Atlanticare and Moore as follows:
  - a. North Carolina does hereby release and forever discharge Atlanticare, and its parent corporations, affiliated corporations, subsidiary corporations, divisions, successors, predecessors and assigns, and all other respective members, shareholders, managers, officers, directors, representatives, agents, employees, insurers, and attorneys (the "Atlanticare Releasees") from any and all claims, damages, demands, causes of action, or liabilities of any kind or nature, including, without limitation, claims for attorney's fees and costs and expenses of any kind, which it now has or may have in the future, whether known or unknown, arising from the Covered Conduct, including but not limited to claims related to 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.
  - b. North Carolina does hereby release and forever discharge Moore and his heirs, executors, administrators, successors, assigns, representatives, agents, employees, insurers, and attorneys (the "Moore Releasees") from any and all claims, damages, demands, causes of action, or liabilities of any kind or nature, including, without limitation, claims for attorney's fees and costs and expenses of any kind, which it now has or may have in the future, whether known or unknown, arising from the Covered Conduct, including but not limited to claims related to 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. Notwithstanding any 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. Administrative liability including mandatory or permissive exclusion from health care programs, but excluding administrative audits, recoupments, and recoveries for the claims identified in the Covered Conduct (expressly set out by the releases in Paragraphs 2a-b);
  - d. Except as explicitly stated in Paragraphs 2.a-b., any claims against any entities or persons other than Atlanticare and/or Moore;
  - e. Any liability to North Carolina (or its agencies) for any conduct other than the Covered Conduct; or
  - f. Any liability based upon obligations created by this Agreement.
4. In the event Atlanticare and/or Moore breaches this Agreement, Atlanticare and Moore expressly agrees not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, except to the extent these defenses were available on or before March 2, 2018, to any civil claims (a) that are filed by the State within 120 days of written notification to Atlanticare and Moore that this Agreement has been breached and the releases herein have been rescinded and (b) that relate to the Covered Conduct.
5. Atlanticare and Moore waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that are specifically limited to 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 North Carolina concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.
6. Atlanticare and Moore fully and finally release 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 Atlanticare and Moore have 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 now being withheld from payment by any Medicaid carrier or intermediary or any state payor, related to the Covered Conduct; and Atlanticare and Moore agree not to resubmit to any Medicaid carrier or intermediary or any state payor 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. Except as explicitly stated in Paragraphs 2.a-b., the Parties do not release any claims against any other person or entity. Atlanticare and Moore agree 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. Atlanticare and Moore warrant that they have reviewed their financial situation and that they currently are 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 Atlanticare or Moore, 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 Atlanticare or Moore were 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, Atlanticare or Moore 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 Atlanticare or Moore's debts, or seeking to adjudicate Atlanticare or Moore as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Atlanticare or Moore or for all or any substantial part of Atlanticare or Moore's assets, Atlanticare and Moore agree as follows:

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

b. If Atlanticare or Moore'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 Atlanticare and/or Moore for the claims that would otherwise be covered by the releases provided in Paragraph 5 above. Atlanticare and Moore 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 Atlanticare and Moore shall not argue or otherwise contend that North Carolina's claims, actions, or proceedings are subject to an automatic stay; (ii) Atlanticare and Moore 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 Atlanticare and Moore 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

has a valid claim against Atlanticare and Moore in the amount of \$325,000.00 or more, and 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. Atlanticare and Moore acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

11. As provided in 31 U.S.C. § 3730(d)(1) or (2), 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 into 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.

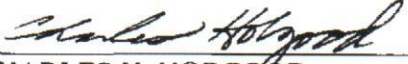
16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

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

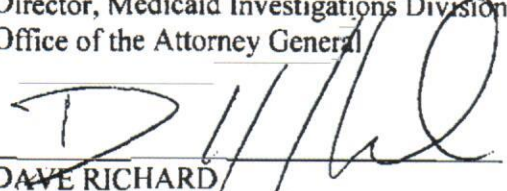
18. All parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.

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

**STATE OF NORTH CAROLINA**

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

Dated: 4/23/2018

  
DAVE RICHARD  
Deputy Secretary for Medical Assistance  
Division for Medical Assistance

Dated: 4/20/2018

**ATLANTICARE HOME CARE AGENCY, INC.**

Elbert Joseph Moore  
Atlanticare Home Care Agency, Inc.  
by Elbert Joseph Moore  
Owner

Dated: 4-27-18

**ELBERT JOSEPH MOORE**

Elbert Joseph Moore  
Elbert Joseph Moore

Dated: 4-27-18