



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

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

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

June 28, 2021

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  
Representative James Boles, Jr.  
Representative Allen McNeill  
Representative Carson Smith  
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 QC Kidz Pediatrics

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 QC Kidz Pediatrics and the State of North Carolina.

The settlement resolves allegations that from January 1, 2015 through April 28, 2020, QC Kidz Pediatrics billed for CPT Code 69210 - Removal Impacted Cerumen submissions that were not medically necessary, had no supporting clinical documentation and were performed in violation of Division of Health Benefits Clinical Coverage Policy.

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Under the terms of North Carolina's settlement, the State of North Carolina will recover \$115,000.00. Of that amount, the federal government will receive \$65,320.00 for North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$23,292.47 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 \$21,884.04 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 \$4,503.49 for cost of collections and 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: William Childs, NCGA Fiscal Research Division  
Mark White, NCGA Fiscal Research Division  
Morgan Weiss, 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” or “State”) and both Jancy C. Utoh, M.D., and QC Kidz Pediatrics, PLLC, a North Carolina corporation (collectively “QC Kidz”), 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. QC Kidz has been a Medicaid Provider since at least 2011 and provides pediatric medical services to Medicaid beneficiaries in and around 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 QC Kidz arising from the following conduct, during the dates of January 1, 2015 through April 28, 2020, for QC Kidz’s submission of claims to the North Carolina Medicaid Program for medical services, to wit, as follows:

(1) CPT 69210 (“Removal Impacted Cerumen”) which the State contends had no supporting clinical documentation, were not medically necessary, and which were performed in violation of North Carolina Department of Health and Human Services Provider Participation Agreement. The conduct referenced in this paragraph is referred to below and throughout this Agreement as the “Covered Conduct.”

B. North Carolina contends that QC Kidz’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. QC Kidz denies the allegations in Paragraphs A and B. This Agreement is neither an admission of liability by QC Kidz, nor a concession by North Carolina that its claims are not well founded.

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. QC Kidz shall pay to North Carolina the aggregate principal amount of one hundred fifteen thousand dollars (\$115,000.00) (“Settlement Amount”), of which \$57,500.00 is restitution. No later than thirty (30) business days following the Effective Date of this Agreement, QC Kidz shall cause to be paid an initial sum of \$50,000.00, by one or more **certified checks**, made payable to the North Carolina Fund for Medical Assistance and sent by certified mail to the Medicaid Investigations Division (“MID”), 5505 Creedmoor Road, Suite 300, Raleigh, NC 27612 (“MID address”). The Settlement Amount constitutes a debt immediately due and owing to North Carolina on the Effective Date of this Agreement. Furthermore, QC Kidz shall pay the remainder of any monies owed to the State pursuant to this Agreement as follows:

A. Defendants will pay the remaining balance (\$65,000.00) in quarterly payments (\$16,250.00), commencing ninety (90) days after payment of the initial sum, and continuing thereafter for a period of no longer than 12 months. To provide security as to the entire \$115,000.00 settlement amount until it is completely paid, Jancy C. Utoh, M.D., and QC Kidz Pediatrics, PLLC, shall sign a Confession of Judgment (Pursuant to N.C.G.S. 68.1, *et seq.*) (Attached as Exhibit A to this Agreement) for the amount of \$115,000.00 which may be docketed

upon failure to timely pay the agreed upon payment amounts as reflected herein and the failure to cure such non-payment within 30 days.

B. If QC Kidz or any of its affiliates is sold, merged, or transferred, or a significant portion of the assets of QC Kidz or of any of its affiliates is sold, merged, or transferred into another non-affiliated entity, QC Kidz shall promptly notify the State of North Carolina, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable.

C. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

D. All Defendants are jointly and severally liable for the entire Settlement Amount.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon QC Kidz's full payment of the Settlement Amount, North Carolina releases Jancy C. Utoh, M.D., and QC Kidz Pediatrics, PLLC, 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.*; common law tort and contract theories of liability, including payment by mistake, unjust enrichment, and fraud; and any other right to recoupment or recovery of the Medicaid payments related to the Covered Conduct; and any claims for attorney's fees, costs or expenses.

3. In the event that QC Kidz fails to pay the Settlement Amount within five (5) business days of the date upon which such payments become due, QC Kidz shall be in Default of the payment obligations ("Default"). North Carolina will provide written notice of the Default, and QC Kidz 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 QC Kidz, or to such other representative as QC Kidz shall designate in advance in writing. If QC Kidz fails to cure the Default within thirty (30) business days of receiving the Notice of Default, 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, North Carolina may, in its sole discretion, choose to set aside the Agreement and bring an action against QC Kidz 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) or North Carolina revenue codes;

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 civil or administrative liability that any person or entity, including QC Kidz, 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 release in Paragraph 2 above, 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;

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.

5. QC Kidz 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, QC Kidz retains and reserves its rights to assert any other defenses in any criminal prosecution or administrative action that might be brought.

6. QC Kidz 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 QC Kidz 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 are 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 QC Kidz 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. QC Kidz 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. Jancy C. Utoh, M.D., and QC Kidz Pediatrics, PLLC, 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 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 Jancy C. Utoh, M.D., and QC Kidz Pediatrics, PLLC, 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 Jancy C. Utoh, M.D., or QC Kidz Pediatrics, PLLC, 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 90 days of the Effective Date of this Agreement or of any payment made under this Agreement, either Jancy C. Utoh, M.D., and/or QC Kidz Pediatrics, PLLC, 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 Jancy C. Utoh, M.D., and/or QC Kidz Pediatrics, PLLC's debts, or seeking to adjudicate Jancy C. Utoh, M.D., and/or QC Kidz Pediatrics, PLLC, as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Jancy C. Utoh, M.D., and/or QC Kidz Pediatrics, PLLC, or for all or any substantial part of Jancy C. Utoh, M.D., and/or QC Kidz Pediatrics, PLLC's assets, Jancy C. Utoh, M.D., and QC Kidz



Pediatrics, PLLC, agree as follows:

a. Jancy C. Utoh, M.D. and/or QC Kidz Pediatrics, PLLC's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and both Jancy C. Utoh, M.D., and QC Kidz Pediatrics, PLLC, shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Jancy C. Utoh, M.D. and/or QC Kidz Pediatrics, PLLC's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Jancy C. Utoh, M.D., and/or QC Kidz Pediatrics, PLLC, 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 Jancy C. Utoh, M.D., or QC Kidz Pediatrics, PLLC;

b. If Jancy C. Utoh, M.D., and/or QC Kidz Pediatrics, PLLC'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 Jancy C. Utoh, M.D., and/or QC Kidz Pediatrics, PLLC, for the claims that would otherwise be covered by the releases provided in Paragraph 5 above. Jancy C. Utoh, M.D., and QC Kidz Pediatrics, PLLC, 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 Jancy C. Utoh, M.D., nor QC Kidz Pediatrics, PLLC, shall argue or otherwise contend that North Carolina's claims, actions, or proceedings are subject to an automatic stay; (ii) Jancy C. Utoh, M.D., and QC Kidz Pediatrics, PLLC, 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 Jancy C. Utoh, M.D., and/or QC Kidz Pediatrics, PLLC, 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. QC Kidz acknowledges that its agreement in this Paragraph is provided in exchange for valuable consideration provided in this Agreement.

11. The Parties shall each bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. The Parties each represent that they freely and voluntarily enter into this Agreement without any degree of duress or compulsion.

13. 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. The 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 (“Effective Date”). Facsimiles, PDFs or similar electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

20. If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable, such term or provision will be excluded and stricken from this Agreement to the extent of such invalidity, illegality, or unenforceability; all other terms and provisions herein shall remain in full force and effect.

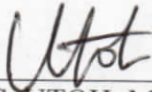
STATE OF NORTH CAROLINA



Dated: 5/20/2021

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

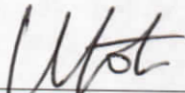
JANCY C. UTOH, M.D.



Dated: 5/19/2021

JANCY C. UTOH, M.D.,  
individually

QC KIDZ PEDIATRICS PLLC



Dated: 5/19/2021

JANCY C. UTOH, M.D., and  
QC KIDZ PEDIATRICS PLLC, both  
individually and as an owner