

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice, and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively, the “United States”), and COVID Test DMV, LLC d/b/a Rapid Health (“Rapid Health”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Rapid Health is a two-member limited liability company incorporated under the laws of the District of Columbia, with a principal place of business in Los Angeles, California. Rapid Health was formed in January 2021 and operates as a pharmacy. Rapid Health participated in the Over-The-Counter (“OTC”) COVID-19 Test Demonstration Program administered by the Centers for Medicare and Medicaid Services (“CMS”) and distributed OTC COVID-19 tests to individuals across the United States.

B. On November 3, 2022, CMS suspended Rapid Health’s Medicare payments pursuant to 42 C.F.R. § 405.371(a)(2) (the “CMS Suspension”). The CMS Suspension remains in place. The term “Suspended Amount” refers to the funds held in suspense by CMS from the date of implementation of the suspension through the Effective Date of this Agreement. As of July 11, 2024, the Suspended Amount was \$23,636,140.38.

C. The United States contends that Rapid Health submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”).

D. The United States contends that it has certain civil claims against Rapid Health arising from its distribution of OTC COVID-19 tests during the period from April 4, 2022,

through May 11, 2023, in connection with its participation in the OTC COVID-19 Test Demonstration Project. Specifically, Rapid Health submitted claims to Medicare for OTC COVID-19 tests it did not in fact provide to Medicare beneficiaries. As a result of this conduct, Rapid Health knowingly submitted or caused to be submitted false claims to the Medicare Program for services not rendered in violation of the False Claims Act, 31 U.S.C. §§ 3729-33. That conduct is referred to below as the “Covered Conduct.”

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. Rapid Health hereby agrees that the United States shall retain Eight Million Two Hundred Forty-Two Thousand Eight Hundred and Sixty Dollars (\$8,242,860.00) (“Settlement Amount”) of the Suspended Amount forevermore, with the remainder of the Suspended Amount applied according to the 42 C.F.R. § 405.372(e), including to reduce or eliminate any outstanding overpayments. Of the Settlement Amount, \$4,121,430.00 is restitution.

2. Rapid Health expressly relinquishes any and all rights of any kind that it may have with respect to the Settlement Amount, including, but not limited to: any and all claims or rights to have an overpayment determined under 42 C.F.R. § 405.372(c); any and all rights to payment of those funds; and any and all rights to appeal, whether formally or informally and whether administratively or judicially, the right of the United States and/or CMS to retain those funds; and any other rights Rapid Health may have to challenge the withholding or the CMS suspension in any respect.

3. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and upon the United States’ retainment of the Settlement Amount, the United States releases Rapid

Health 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.

4. Notwithstanding the release given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights 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;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, 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 of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

5. Rapid Health waives and shall not assert any defenses Rapid Health may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on 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.

6. Rapid Health fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Rapid Health has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' 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 Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Rapid Health agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

8 Rapid Health 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Rapid Health, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

- (3) Rapid Health's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Rapid Health makes to the United States pursuant to this Agreement

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

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Rapid Health, and Rapid Health shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Rapid Health or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Rapid Health further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Rapid Health or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information

reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Rapid Health agrees that the United States, at a minimum, shall be entitled to recoup from Rapid Health 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 reserves its rights to disagree with any calculations submitted by Rapid Health or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Rapid Health or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Rapid Health's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

9. Rapid Health agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Rapid Health shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Rapid Health further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any

investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

10. 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 11 (waiver for beneficiaries paragraph), below.

11. Rapid Health agrees that it waives 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.

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

13. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

14. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Central District of California. 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.

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

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


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

18. This Agreement is binding on Rapid Health's successors, transferees, heirs, and assigns.

19. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

20. 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.

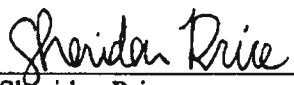
THE UNITED STATES OF AMERICA

DATED: 12/19/24 BY: 
Lindsay DeFrancesco
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 12/16/24 BY: SUSAN GILLIN
Susan E. Gillin
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

Digitally signed by
SUSAN GILLIN
Date: 2024.12.16
15:00:25 -05'00'

COVID TEST DMV, LLC D/B/A/ RAPID HEALTH

DATED: 12-10-2024 BY: 
Sheridan Price
Owner of Rapid Health