

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”), Rural/Metro of Southern Ohio, Inc., and Nicholas Ratterman (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Rural/Metro of Southern Ohio, Inc. (“Rural/Metro”) is an Ohio corporation with operations in Erlanger, Kentucky using the National Provider Identifier number 1144330168. At all times relevant, Rural/Metro provided ambulance services to Medicare beneficiaries, and submitted or caused to be submitted claims for those services to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”).

B. On March 27, 2017, Nicholas Ratterman (“Relator”) filed a *qui tam* action in the United States District Court for the Eastern District of Kentucky captioned *United States ex rel. Ratterman v. Mercury Ambulance Service, Inc. d/b/a Rural/Metro Ambulance, Rural/Metro of Lexington, and, Rural/Metro Ambulance Service*, 5:17-cv-148-JMH, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleged that Rural/Metro violated the False Claims Act by submitting claims to Medicare for medically unnecessary ambulance transports and for fraudulently upcharging for unnecessary advanced life support services.

C. The United States contends that it has certain civil claims against Rural/Metro of Southern Ohio, Inc., NPI 1144330168, arising from its submission of A0428 and A0425 claims with HN, HE, and HR modifiers to Medicare for BLS ambulance transports in the Commonwealth of Kentucky between six o’clock in the evening and six o’clock in the morning

during the period from January 1, 2013 through September 1, 2017. The United States contends that the claims for these transports were false because the transports were not medically necessary. The foregoing is referred to below as the “Covered Conduct.”

D. This Agreement is neither an admission of liability by Rural/Metro nor a concession by the United States that its claims are not well-founded.

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

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. Rural/Metro shall pay:

a. two hundred seventy five thousand one hundred sixteen dollars and twenty-two cents (\$275,116.22) to the United States (the “Government Settlement Amount”), of which one hundred thirty-seven thousand five hundred fifty-eight dollars and eleven cents (\$137,558.11) is restitution, no later than 15 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of Kentucky; and

b. sixty-five thousand dollars (\$65,000.00) to Relator’s counsel (the “Relator Settlement Amount”), of which twenty-five thousand (\$25,000.00) is for attorney’s fees in accordance with 31 U.S.C. § 3730(d)(1), no later than 15 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Relator’s counsel.

2. Conditioned upon the United States receiving the Government Settlement Amount from Rural/Metro and as soon as feasible after receipt, the United States shall pay forty-four thousand eighteen dollars and sixty cents (\$44,018.60) (the “Relator’s Share”) to Relator by electronic funds transfer.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Rural/Metro’s full payment of the Government Settlement Amount, the United States releases Rural/Metro, together with its current and former direct or indirect parent corporations, subsidiaries, and divisions 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. Conditioned upon the United States’ receipt of the full payment of the Government Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Rural/Metro, and its current and former direct or indirect parent entities, subsidiaries, sister or related companies, affiliates, divisions, officers, directors, agents, representatives, and employees from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733. This release includes without limitation the additional entities named as defendants in the Civil Action to the extent they exist or have ever existed.

5. Notwithstanding the releases given in paragraph 3 of this Agreement, or any other term 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;
- c. 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 of individuals.

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Conditioned upon Rural/Metro's full payment of the Relator Settlement Amount, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Rural/Metro, and its current and former direct or indirect parent entities, subsidiaries, sister or related companies, affiliates, divisions, officers, directors, agents, representatives, and employees from liability to Relator for any and all claims, demands, causes of action whatsoever that Relator may have or purport to have against Rural/Metro and/or its current and former direct or indirect parent entities, subsidiaries, sister or related companies, affiliates, divisions, officers, directors, agents, representatives, and employees, including, without limitation any liability to Relator arising from the filing of the Civil Action, any claims under 31 U.S.C. § 3730(d) or other

law for expenses or attorney's fees and costs, any claims under 31 U.S.C. § 3730(h) or other law for retaliation, any claims for wrongful termination as against public policy or under state or other law, and any other claims whatsoever that Relator may purport to have against Rural/Metro and/or its current and former direct or indirect parent entities, subsidiaries, sister or related companies, affiliates, divisions, officers, directors, agents, representatives, and employees under any state, federal, or common law, whether known or unknown, fixed or contingent, in law or in equity, whether on his own behalf or on behalf of another, including but not limited to any liability arising from or relating to the claims Relator asserted or could have asserted in the Civil Action. This release includes without limitation the additional entities named as defendants in the Civil Action to the extent they exist or have ever existed. Relator further waives any claim to reinstatement or re-employment with Rural/Metro and/or its current and former direct or indirect parent entities, subsidiaries, sister or related companies, affiliates, divisions, officers, directors, agents, representatives, and employees.

8. Rural/Metro waives and shall not assert any defenses Rural/Metro 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.

9. Rural/Metro 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 Rural/Metro has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and

servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. Rural/Metro fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Rural/Metro has asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action and the Relator's investigation and prosecution thereof.

11. 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 Rural/Metro 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.

12. Rural/Metro 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 Rural/Metro, 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) Rural/Metro'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 attorney's fees);

- (4) the negotiation and performance of this Agreement; and
- (5) the payment Rural/Metro makes to the United States pursuant to this Agreement and any payments that Rural/Metro may make to Relator, including costs and attorney's fees

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 Rural/Metro, and Rural/Metro 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 Rural/Metro or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Rural/Metro 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 Rural/Metro 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. Rural/Metro agrees that the United States, at a minimum, shall be entitled to recoup from Rural/Metro 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 Rural/Metro or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Rural/Metro 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 Rural/Metro's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. Upon reasonable notice, Rural/Metro 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.

14. 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 15 (concerning waiver for beneficiaries), below.

15. Rural/Metro 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.

16. Within three (3) business days of receipt of all payments described in Paragraph 1, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1) in the form attached as Exhibit A.

17. Except as otherwise may be provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. 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.

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Kentucky. 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.

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

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

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

23. This Agreement is binding on Rural/Metro's successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

26. 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: 6/28/19 BY: Jennifer A. Williams
Jennifer A. Williams
Mary Lauren Melton
Assistant United States Attorneys
Eastern District of Kentucky

DATED: 06/28/2019 BY: Lisa M. RE
LISA M. RE
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

Rural/Metro - DEFENDANT

DATED: _____ BY: _____
Edward Van Horne
President and Chief Executive Officer

DATED: _____ BY: _____
Laura McLane
Tony Maida
McDermott Will & Emery LLP
Counsel for Rural/Metro

24. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

Jennifer A. Williams
Mary Lauren Melton
Assistant United States Attorneys
Eastern District of Kentucky


DATED: _____

BY: _____

LISA M. RE
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

Rural/Metro - DEFENDANT

DATED: 6/26/2019

BY:  _____

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Edward Van Horne
President and Chief Executive Officer

DATED: _____

BY: _____

Laura McLane
Tony Maida
McDermott Will & Emery LLP
Counsel for Rural/Metro

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THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
Jennifer A. Williams
Mary Lauren Melton
Assistant United States Attorneys
Eastern District of Kentucky

DATED: _____

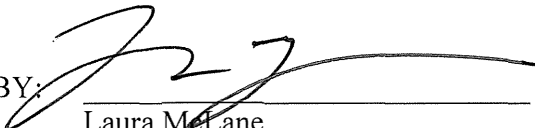
BY: _____
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

Rural/Metro - DEFENDANT

DATED: _____

BY: _____
Edward Van Horne
President and Chief Executive Officer

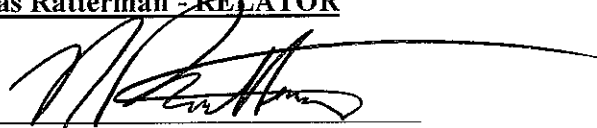
DATED: 6/27/19

BY:  _____
Laura McLane
Tony Maida
McDermott Will & Emery LLP
Counsel for Rural/Metro

Nicholas Ratterman - RELATOR

DATED: 6/27/2019

BY:


Nicholas Ratterman

DATED: 6/27/19

BY:

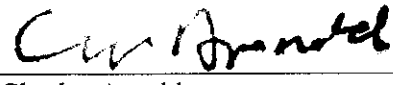

Charles Arnold
Arnold & Miller, PLC
Counsel for Nicholas Ratterman

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

Civil Action No. 5:17-CV-148-JMH

**United States of America, *ex rel.*
Nicholas Ratterman,**

Plaintiffs,

v.

**Mercury Ambulance Service, Inc.
d/b/a Rural/Metro Ambulance,
Rural/Metro of Lexington, and,
Rural/Metro Ambulance Service**

Defendants.

Joint Stipulation of Dismissal

The United States and Relator Nicholas Ratterman by counsel, and pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and the settlement agreement dated Ju__ __, 2019, hereby stipulate to the dismissal with prejudice of allegations that Defendants knowingly submitted, or caused the submission of, false or fraudulent claims for payment to Medicare by submitting A0428 and A0425 claims with HN, HE, and HR modifiers to Medicare for BLS ambulance transports in the Commonwealth of Kentucky between six o'clock in the evening and six o'clock in the morning during the period from January 1, 2013 through September 1, 2017.

The United States and Relator Ratterman further stipulate to the dismissal of all other remaining allegations against Defendants contained in the First Amended Complaint (R. 13) without prejudice as to the United States, and with prejudice as to Relator Ratterman.

SO STIPULATED AND AGREED:

ROBERT M. DUNCAN, JR.
United States Attorney

By: _____

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Counsel for Relator Nicholas Ratterman

CERTIFICATE OF SERVICE

On DATE, I electronically filed this document through the ECF system, which will send a notice of electronic filing to all attorneys of record.

By: _____
Assistant United States Attorney