

## 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 U.S. Department of Veterans Affairs (collectively the "United States") and Health Net Federal Services (hereafter collectively referred to as "the Parties"), through their authorized representatives.

### RECITALS

A. Health Net Federal Services (HNFS) served as a third-party administrator for the U.S. Department of Veterans Affairs (VA) under two federal programs: (1) The 2013 Patient-Centered Community Care Program (PC3), which offered private healthcare to veterans when services were not readily available or accessible at their local VA medical facility; and (2) The Veterans Access, Choice, and Accountability Act of 2014 (Choice Program), which specified that the private healthcare would be available to veterans who waited more than thirty days for care from VA, or lived more than forty miles away from a VA medical facility. In this administrative capacity, HNFS arranged for private healthcare for veterans, reimbursed treating private health care providers, and billed the VA for the services.

B. The United States contends that it has certain civil claims against HNFS, arising from the following conduct:

i) HNFS submitted duplicate billings to the VA for health care services provided to veterans, resulting in \$92,544,549.18 in overpayments to HNFS between June 9, 2014 and April 8, 2019;

ii) HNFS failed to pass through negotiated discounts on payments it made to private health care providers for services provided to veterans, resulting in \$1,137,879.78 in overpayments to HNFS between March 11, 2015 and March 31, 2017.

The conduct described in this paragraph (B) is referred to herein as the Covered Conduct.

C. HNFS refunded the overpayments described above in paragraph B(i) during the United States' investigation of the Covered Conduct; HNFS refunded the overpayments described in paragraph B(ii) on May 18, 2017.

D. Through this Agreement, HNFS will pay interest on the overpayments, in the amounts of: i) duplicate billings: \$3,550,629.92; and ii) failure to pass through discounts: \$4,332.81.

E. This Agreement is neither an admission of facts or liability by HNFS nor a concession by the United States that its 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 Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. HNFS shall pay to the United States three million, five hundred fifty-four thousand, nine hundred sixty-three dollars (\$3,554,963) (Settlement Amount) plus interest on the Settlement Amount at a rate of 3% per annum from February 15, 2021 through the date paid by electronic funds transfer, pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of California, on or before the later of ten (10) business days after the Effective Date of this

Agreement or five (5) business days after receiving the above-referenced written instructions. If payment is not timely received as required above, HNFS shall also pay interest on the amounts not received at a rate of 10% in addition to the 3% noted above (13%) from the date payment was due through the date payment is received. The Settlement Amount includes zero dollars restitution, as the overpayments described in the recitals above have already been refunded by HNFS.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, plus interest due under paragraph 1, the United States releases HNFS together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the common law theories of breach of contract and fraud.

3. Notwithstanding the releases given in Paragraph 2 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 the suspension and debarment rights of any federal agency;

- 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 failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. HNFS waives and shall not assert any defenses HNFS 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.

5. HNFS fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that HNFS 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. HNFS hereby expressly waives all rights it may have by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

HNFS's releases herein shall be effective whether or not they release claims that are currently known, unknown, foreseen or unforeseen.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of HNFS, and 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) HNFS' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and 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 HNFS makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by HNFS, and HNFS shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: Within 90 days of the Effective Date of this Agreement, HNFS shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by HNFS or any of its subsidiaries or affiliates from the United States. HNFS agrees that the United States, at a minimum, shall be entitled to recoup from HNFS any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine HNFS' books and records and to disagree with any calculations submitted by HNFS or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by HNFS, or the effect of any such Unallowable Costs on the amount of such payments.

7. HNFS agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, HNFS 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. HNFS 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.

8. This Agreement is intended to be for the benefit of the Parties only.

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

10. Each of the Parties and each signatory to this Agreement warrants and represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants and represents that no other Party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Agreement, and that no Party has relied on any inducements, promises, or representations made by any Party to this Agreement, or its representatives, or any other person, except as expressly set forth herein.

11. 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 Eastern 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.

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

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

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

15. This Agreement is binding on HNFS's successors, transferees, heirs, and assigns.

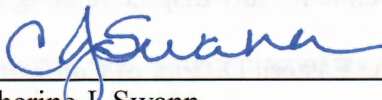
16. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES OF AMERICA


PHILLIP A. TALBERT  
Acting United States Attorney

Dated: March 19, 2021

By:   
Catherine J. Swann  
Assistant U.S. Attorney

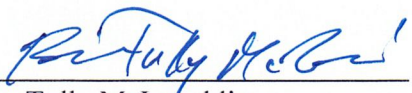
Health Net Federal Services

Dated: March 18, 2021

By:   
Kathleen E. Redd  
President & Chief Executive Officer  
Health Net Federal Services



Dated: 3/17/2021

By:   
Brian Tully McLaughlin  
Crowell & Moring LLP  
Counsel for Health Net Federal Services