

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”), Martin’s Point Health Care, Inc., including its subsidiary Martin’s Point Generations Advantage, Inc. (“GA”) (collectively, Martin’s Point), and Alicia Wilbur (Relator) (hereafter all of the above collectively shall be referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Martin’s Point is a non-profit corporation with its principal place of business in Portland, Maine. Martin’s Point is a Medicare Advantage (MA) organization that, through its wholly owned subsidiary Martin’s Point GA, offers MA plans for Medicare beneficiaries in Maine and New Hampshire under Parts C and D of the Medicare Program.

B. Under the MA Program, private health-insurance organizations known as “MA organizations” agree to provide Medicare coverage to Medicare beneficiaries in exchange for capitated payments (i.e., fixed monthly payments for each enrollee) from the Centers for Medicare & Medicaid Services (CMS), which is the component within HHS that administers the Medicare Advantage program. CMS adjusts these payments for various “risk” factors that affect expected healthcare expenditures, to ensure that MA organizations are paid more for less healthy enrollees for whom the MA organization is expected to incur higher healthcare costs and less for healthier enrollees for whom the MA organization is expected to incur lower healthcare costs. As part of obtaining these payment adjustments, MA organizations submit “risk adjustment” data, including medical diagnosis codes for their enrollees, to CMS. To ensure that the government is paying for only accurate and truthful diagnosis codes, federal regulations require

that the codes submitted by MA organizations be supported by the medical records of the beneficiaries enrolled in their MA plans.

C. At all relevant times herein, Martin's Point entered annual written contracts with CMS pursuant to which it offered its MA plans to Medicare beneficiaries in Maine and New Hampshire. A prerequisite to payment under the MA program is that MA organizations expressly certify "based on best knowledge, information, and belief" that the risk adjustment information they have provided to CMS is "accurate, complete, and truthful." 42 C.F.R. § 422.504(1)(2). This requirement was also set forth in the contracts between Martin's Point and CMS. Martin's Point submitted such a signed certification to CMS every year.

D. On June 29, 2018, Relator filed a *qui tam* action in the United States District Court for the District of Maine captioned *United States ex rel. Alicia Wilbur v. Martin's Point Health Care Inc.*, Case No. 2:18-cv-00254-DBH, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). The United States partially intervened in the Civil Action on July 25, 2023, for purposes of effectuating this settlement.

E. The United States contends that Martin's Point knowingly submitted or caused to be submitted false claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395III (Medicare), and made or caused to be made false statements material to Medicare's payment of false claims.

F. The United States contends that it has certain civil claims against Martin's Point arising from the conduct described in this Paragraph.

For payment years 2016 to 2019, Martin's Point operated a "chart review" program, pursuant to which it retrieved medical records (also known as charts) from healthcare providers documenting services they had rendered to Medicare beneficiaries enrolled in Martin's Point's MA plans. Martin's Point retained vendors and employed professional healthcare coders to review those charts to identify all medical conditions that the charts supported. Martin's Point relied on the results of its chart reviews to submit additional diagnosis codes to CMS that the healthcare providers had not reported. Martin's Point did this to obtain additional payments from CMS.

During the period 2016 to 2019, Martin's Point knowingly submitted additional diagnosis codes derived from Martin's Point's "chart review" program that were unsupported, unsubstantiated, and invalid based on the underlying medical records. Specifically, Martin's Point knowingly submitted diagnosis codes that mapped to the following ten hierarchical condition categories (HCCs): 18 (Diabetes with Chronic Complications), 19 (Diabetes without Complications), 22 (Morbid Obesity), 40 (Rheumatoid Arthritis and Inflammatory Connective Tissue Disease), 55 (Drug/Alcohol Dependence), 85 (Congestive Heart Failure), 88 (Angina Pectoris), 96 (Specified Heart Arrhythmias), 108 (Vascular Disease), and 111 (Chronic Obstructive Pulmonary Disease), of which a significant percentage were unsupported by the underlying medical records. Martin's Point submitted those erroneous codes knowingly and, as a result, received capitated payments to which it was not entitled under the MA Program.

The conduct set forth in this Paragraph is referred to below as the "Covered Conduct."

G. Since 2019, Martin's Point has made leadership and personnel changes along with changes to its Board of Directors.

H. This Settlement Agreement is neither an admission of liability by Martin's Point nor a concession by the United States that its claims are not well-founded.

I. 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.

TERMS AND CONDITIONS

1. Martin's Point shall pay to the United States Twenty-Two Million, Four Hundred Eighty-Five Thousand Dollars (\$22,485,000) (Settlement Amount) and interest on the Settlement Amount at a rate of 4.125% per annum from June 13, 2023, of which \$12,491,883.22 is restitution, no later than five (5) business 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 District of Maine.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$3,822,450 to Relator by electronic funds transfer (Relator's Share).

3. Martin's Point and Relator will seek agreement on the amount of Relator's reasonable expenses, attorneys' fees and costs, under 31 U.S.C. § 3730(d) ("Relator's Fees"). Any such agreement between Martin's Point and Relator will be set forth in a separate settlement agreement. Relator's Fees are expressly reserved and not released by this Agreement.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Martin's Point, 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 (together, the "Martin's Point Releasees"), 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.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, Relator, for herself and for her heirs, successors, attorneys, agents, partners, and assigns, and any and all entities formerly, now, or in the future owned in whole or in part by herself or her heirs, successors, partners, agents, and assigns, jointly and severally, releases the Martin's Point Releasees from any and all causes of action, claims, potential claims, and requests for relief, whether known or unknown, that Relator may have, including without limitation, (i) any civil claim the Relator has or may have on behalf of any state, or on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; (ii) all claims asserted in the Civil Action; (iii) all employment claims, and (iv) all common law and / or statutory claims, with the exception

of claims concerning conduct that arises and post-dates the Effective Date of this Agreement. Relator represents and warrants that she is not currently aware of any cause of action, claim, or request for relief that could lawfully be brought at this time against the Martin's Point Releasees, other than those encompassed within the Covered Conduct or the Civil Action, for which a full release is herein granted.

6. Notwithstanding the releases given in Paragraphs 4 and 5 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 failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and her 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, Relator and her 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.

8. Martin's Point waives and shall not assert any defenses Martin's Point 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. Martin's Point 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 Martin's Point 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 or the United States' investigation or prosecution thereof.

10. Martin's Point fully and finally releases the Relator, and her heirs, successors, attorneys, agents, and assigns, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Martin's Point has asserted, could have asserted, or

may assert in the future against the Relator, including but not limited 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 Martin's Point 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. Martin's Point 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 Martin's Point, 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) Martin's Point'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 Martin's Point makes to the United States pursuant to this Agreement and any payments that Martin's Point may make to Relator, including costs and attorneys' 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 Martin's Point, and Martin's Point 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 Martin's Point or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

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

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

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 (waiver for beneficiaries paragraph), below.

15. Martin's Point 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. Upon receipt of the payment described in Paragraph 1, above, the United States and the 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) of the Federal Rules of Civil Procedure. Such dismissal shall be:

- a. With prejudice to Relator as to all parties, claims, causes of action, and requests for relief in the Civil Action; and
- b. With prejudice to the United States as to the Covered Conduct and otherwise without prejudice.

In the event that Martin's Point has not yet made the payment described in Paragraph 3 above as of the filing of this Joint Stipulation, the Joint Stipulation shall reflect that the Court retains jurisdiction over Relator's Fees and the Relator shall have no less than 45 days from the filing of this Joint Stipulation to submit a petition for reasonable expenses, attorneys' fees and costs under 31 U.S.C. § 3730(d). Relator may have additional time to submit her petition if Relator and Martin's Point agree in writing.

17. Except for Martin's Point's payment of Relator's reasonable expenses, attorneys' fees and costs under 31 U.S.C. § 3730(d), 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 into 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 District of Maine. 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 Martin's Point's successors, transferees, heirs, and assigns.

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

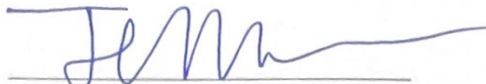
25. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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: _____

BY: _____



J. Jennifer Koh
Trial Attorney
Commercial Litigation Branch
Civil Division

DATED: _____

BY: _____

John G. Osborn
Assistant United States Attorney
Office of the United States Attorney
District of Maine

DATED: _____

BY: _____

James D. Concannon
Assistant United States Attorney
Office of the United States Attorney
District of Maine

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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

J. Jennifer Koh
Trial Attorney
Commercial Litigation Branch
Civil Division

DATED: 7/24/2023

BY: _____

John G. Osborn
Assistant United States Attorney
Office of the United States Attorney
District of Maine

DATED: 7/24/23

BY: _____

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District of Maine

DATED: _____

BY: _____

James D. Concannon
Assistant United States Attorney
Office of the United States Attorney
District of Maine

DATED: _____

BY: _____


LISA RE
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Date: 2023.07.21 17:19:39
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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

MARTIN'S POINT - DEFENDANT

DATED: 7/20/2023


BY:



Jeffrey A. Smagula
Martin's Point Health Care, Inc.
Chief Legal Officer and General Counsel

DATED: 7/24/2023


BY:




Brian P. Dunphy
Tara E. Dwyer
Nicole E. Henry
Caitlin A. Hill
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Counsel for Martin's Point Health Care, Inc.

Alicia Wilbur - RELATOR

DATED: 7/20/23

BY: 
Alicia Wilbur

DATED: 7/20/23

BY: 
Amy L. Easton
Jeffrey W. Dickstein
Phillips & Cohen LLP
Counsel for Alicia Wilbur