

## **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"), the State of Iowa ("the State"), and Boys and Girls Home and Family Services, Inc. ("B&G") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

### **RECITALS**

A. B&G, which is located in Sioux City, Iowa, is a non-profit agency that provides, among other services, residential treatment programs to children between the ages of 6 to 18.

B. The United States and the State contend that B&G submitted or caused to be submitted claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 ("Medicaid").

C. The United States and the State contend that they have certain civil claims against B&G arising from B&G submitting or causing to be submitted false or fraudulent claims to the Iowa Medicaid program. Specifically, the United States and State contend that, between January 1, 2013, and December 31, 2015, B&G improperly submitted Current Procedural Terminology ("CPT") Code 90833 claims to Iowa Medicaid for thirty minutes of individual psychotherapy allegedly performed by Dr. Matthew Eggers on residential patients receiving an evaluation and management service when, in fact, the claims were improper for two reasons: (1) the patients were not eligible for individual CPT 90833 claims because Iowa Medicaid paid a bundled rate for residential services for these patients that included a payment for psychotherapy and (2) the doctor performing the evaluation and management service did not perform a sufficient amount of

psychotherapy to justify payment of a CPT 90833 claim. That conduct is referred to below as the "Covered Conduct."

E. This Settlement Agreement is neither an admission of liability by B&G nor a concession by the United States or the State that their 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 Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. B&G shall pay to the United States \$207,067.53 ("Settlement Amount"), as follows. B&G shall pay \$82,827.01 no later than 30 days after the Effective Date of this Agreement, and B&G shall pay the remaining \$124,240.52 no later than 180 days after the Effective Date of this Agreement. Both payments must be made by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Northern District of Iowa.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon B&G's full payment of the Settlement Amount, the United States releases B&G 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. Subject to the same exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon B&G's full payment of the Settlement Amount, the State releases B&G from any civil or administrative monetary claim the State has for the Covered Conduct under the State of Iowa's

False Claims Act, Iowa Code Ch. 685, or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State 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, 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.

4. B&G waives and shall not assert any defenses B&G 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.

Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. B&G fully and finally releases the United States, the State, and their respective agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that B&G has asserted, could have asserted, or may assert in the future against the United States, the State, and their respective agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' and State's investigation and prosecution thereof.

6. 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 B&G 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.

7. B&G agrees, if applicable, 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 B&G, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the State's audits and civil investigations of the matters covered by this Agreement;
- (3) B&G's investigation, defense, and corrective actions undertaken in response to the United States' and the State's audits and civil investigations 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 B&G 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 B&G, and B&G 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 B&G or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: B&G 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 B&G 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. B&G agrees that the United States, at a minimum, shall be entitled to recoup from B&G 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 and the State reserve their rights to disagree with any calculations submitted by B&G or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on B&G 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 or the State to audit, examine, or re-examine B&G's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. B&G agrees to cooperate fully and truthfully with the United States' or the State's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, B&G 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. B&G further agrees to furnish to the United States and the State, 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.

9. 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 10 (waiver for beneficiaries paragraph), below.

10. B&G 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.

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

12. 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.

13. 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 Northern District of Iowa. 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.

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 counsel 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 B&G's successors, transferees, heirs, and assigns.

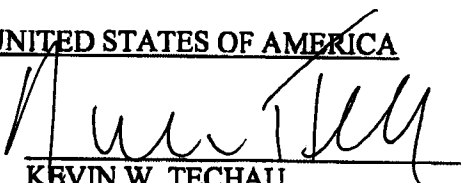
18. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

19. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date 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: July 2, 2016

BY:



KEVIN W. TECHAU  
United States Attorney  
Northern District of Iowa

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ROBERT K. DECONTI  
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 STATE OF IOWA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

MIKKI STIER  
State Medicaid Director

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

LISA REEL SCHMIDT  
Assistant Attorney General  
State of Iowa



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THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
KEVIN W. TECHAU  
United States Attorney  
Northern District of Iowa

DATED: 6/8/16

BY: Robert K. DeConti  
ROBERT K. DECONTI  
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 STATE OF IOWA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
MIKKI STIER  
State Medicaid Director

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LISA REEL SCHMIDT  
Assistant Attorney General  
State of Iowa

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THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

KEVIN W. TECHAU  
United States Attorney  
Northern District of Iowa

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ROBERT K. DECONTI  
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 STATE OF IOWA


DATED: 6-7-16

BY: \_\_\_\_\_

  
MIKKI STIER  
State Medicaid Director

DATED: 6-9-16

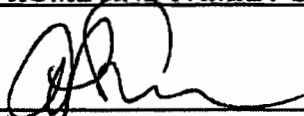
BY: \_\_\_\_\_

  
LISA REEL SCHMIDT  
Assistant Attorney General  
State of Iowa

BOYS AND GIRLS HOME AND FAMILY SERVICES, INC.

DATED: 6-2-16

BY:



ART SILVA

Chief Executive Officer

Boys and Girls Home and Family Services, Inc.

DATED: 6-1-14

BY:



JULIE A. KNUTSON

Baird Holm, LLP