

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into among the Delaware Attorney General's Office acting through the Delaware Medicaid Fraud Control Unit (MFCU), 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 "Government"); Green Valley Pavilion, LLC (GVP); and Relator Walter T. Decyk, III (Relator), (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. GVP is a skilled nursing facility located at 1455 S. DuPont Highway, Smyrna, DE 19977.
- B. On or about July 13, 2004, Relator filed a qui tam action that is pending against GVP and that is captioned: United States of America and the State of Delaware ex rel. Sherry Scharff, L.P.N., and Walter T. Decyk, III, L.P.N. v. IHS, Inc., et al., Case No. 04-105 (D. Del.) (hereafter referred to as "the Qui Tam Action").
- C. The Government contends that GVP submitted or caused to be submitted claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396v.
- D. The Government contends that it has certain civil claims against GVP for engaging in the following conduct with respect to the Delaware Medicaid Program (Medicaid):

1) during the period from May 1, 2003 through and including May 31, 2004, GVP, through its employees, submitted requests for add-on payments to Medicaid knowing that the medical charts for its Medicaid residents had been unlawfully altered to indicate that rehabilitative and psycho-social services had been provided to said residents, when in fact such services had not been provided; and 2) from January 1, 2003 through May 31, 2004, GVP, through its employees, knowingly altered GVP staffing records to improperly evidence compliance with the staffing requirements contained in "Eagle's Law," 16 Del C. 1161 *et seq.* (hereinafter collectively referred to as the "Covered Conduct").

E. The United States contends also that it has certain administrative claims, as specified below, against GVP for engaging in the Covered Conduct.

F. This Agreement is neither an admission of liability by GVP nor a concession by the Government that its claims are not well founded. GVP explicitly denies any wrongdoing, inadequacy or liability in regard to the Covered Conduct and the care rendered to its residents.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

A. GVP agrees to pay the United States the total sum of \$550,000, inclusive of interest (the "Settlement Amount"). By no later than the Effective Date of this Agreement, GVP will make a payment of \$250,000 of the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's

Office for the District of Delaware ("the District of Delaware"). The District of Delaware will subsequently forward fifty percent (50%) of that initial payment to the MFCU. Notwithstanding any other provision of this Agreement, to the extent that the first payment of the Settlement Amount (i.e., \$250,000) is not paid by April 16, 2007, interest shall accrue on this initial payment at the rate of 4.75% per annum compounded monthly from April 16, 2007, until such time as the initial payment is made.

B. Over a period of 4 years, GVP will pay the remaining \$300,000 of the Settlement Amount, and the schedule of payment of this remaining \$300,000 shall be as follows:

1. By no later than the one year anniversary of the Effective Date of this Agreement, GVP agrees to pay \$100,000 by electronic funds transfer pursuant to written instructions to be provided by the District of Delaware. The District of Delaware will subsequently forward to the MFCU fifty percent (50%) of that GVP payment.

2. By no later than the two year anniversary of the Effective Date of this Agreement, GVP agrees to pay \$90,000 by electronic funds transfer pursuant to written instructions to be provided by the District of Delaware. The District of Delaware will subsequently forward to the MFCU fifty percent (50%) of that GVP payment.

3. By no later than the three year anniversary of the Effective Date of this Agreement, GVP agrees to pay \$67,500 by electronic funds transfer pursuant to written instructions to be provided by the District of Delaware. The District of

Delaware will subsequently forward to the MFCU fifty percent (50%) of that GVP payment.

4. By no later than the four year anniversary of the Effective Date of this Agreement, GVP agrees to pay \$42,500 by electronic funds transfer pursuant to written instructions to be provided by the District of Delaware. The District of Delaware will subsequently forward to the MFCU fifty percent (50%) of that GVP payment.

C. In the event GVP fails to pay any amount as provided in Paragraphs III(A) and (B) above, within five (5) business days of the date upon which such payment is due, GVP shall be in Default of its payment obligations ("Default"). The Government will provide written notice of the Default, and GVP shall have an opportunity to cure such Default within five (5) business days from the date of receipt of the notice. If GVP fails to cure the Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded monthly from the date of Default on the remaining unpaid total (principal and interest balance). Upon request by the Government, GVP shall stipulate to a Consent Judgment in the amount of the unpaid balance, and the Government, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to GVP by any department, agency, or agent of the United States at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. GVP agrees not to contest any offset imposed and not to contest any collection action

undertaken by the Government pursuant to this Paragraph, either administratively or in any state or federal court. GVP shall pay the Government all reasonable costs of collection and enforcement under this Paragraph, including reasonable attorney's fees and expenses. Of any such payments by GVP to the United States, fifty percent (50%) will be paid to the MFCU.

D. Further, GVP's obligation to pay the Settlement Amount as described above shall be secured pursuant to an Agreement of Guaranty, in the form of Exhibit A attached hereto.

E. Conditioned upon GVP's payment in full of the Settlement Amount, subject to the exceptions in Paragraph III(J) below, and in consideration of the obligations of GVP set forth in this Agreement, the United States of America agrees to release GVP, together with its current and former parent corporations, each of its direct and indirect subsidiaries, divisions, affiliates, successors, and assigns, and current or former owners, officers, and directors from any civil or administrative monetary action the United States has or may have 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; and the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct.

F. Conditioned upon GVP's payment in full of the Settlement Amount, subject to the exceptions in Paragraph III(J) below, and in consideration of the obligations of GVP set forth in this Agreement, the Delaware Attorney General's Office acting through the MFCU agrees to release GVP, together with its current and former parent corporations, each of its direct and indirect subsidiaries, divisions, affiliates, successors, and assigns, and current or former owners, officers, and directors from any: a) criminal action the MFCU has or may have, and b) any civil

or administrative monetary action the MFCU has or may have under the State of Delaware's False Claims Act, Del. Code Ann. Title 6, §§ 1201-09; and the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct.

G. In consideration of the obligations of GVP set forth in this Agreement and the Corporate Integrity Agreement (CIA) entered into between GVP's parent corporation, Green Acres Health Systems, Inc., and the OIG-HHS on or about this same date, and conditioned upon GVP's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against GVP under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph III(J) below, and as reserved in this Paragraph.

The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude GVP from the Medicare, Medicaid, or other Federal health care program under 42 U.S.C. § 1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph III(J), below.

H. The Relator has asserted claims against GVP under 31 U.S.C. § 3730(d) and Del. Code Ann. Title 6, § 1205(a) for payment of reasonable attorneys' fees and costs pertaining to the allegations in the Qui Tam Action related to the Covered Conduct. GVP agrees to pay the following as and for reasonable attorneys' fees and costs: \$53,970 in attorney's fees and

\$1,874.81 in costs to Regina Poserina, Esquire; \$7,020 in attorney's fees to Charles Butler, Esquire; and \$3,570 in attorney's fees to Adam Balick, Esquire. These amounts shall be paid to the Relator's attorneys no later than the Effective Date of this Agreement.

In consideration of the obligations of GVP set forth in this Agreement, subject to the exceptions in Paragraph III(J) below, and conditioned upon GVP's payment in full of the Settlement Amount and payment of the attorneys' fees set forth in this Paragraph, the Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release GVP, together with its current and former parent corporations, each of its direct and indirect subsidiaries, divisions, affiliates, successors and assigns, and current or former owners, officers, and directors from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-2733, and from any civil monetary claim the State of Delaware has or may have for the Covered Conduct under the State's False Claims Act, Del. Code Ann. Title 6, §§ 1201-09.

I. GVP fully and finally releases the Relator and his respective heirs, successors, assigns, agents, and attorneys from any claims GVP has asserted, could have asserted, or may assert in the future against the Relator and his attorneys, for his or his counsel's investigation and prosecution of the Covered Conduct in the Qui Tam Action.

J. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are the following:

a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);

- b. Any federal criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability to failure to deliver goods or services due;
- h. Any civil or administrative liability of GVP employees: who have received or will receive written notification that they are the target of a criminal investigation (as defined in the United States Attorney's Manual); who have been or will be indicted, charged, or convicted; or who enter or have entered into a plea agreement related to the Covered Conduct.

K. Relator and his heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree to confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and 6 Del. C. 1201 *et seq.* In connection with this Agreement and the Qui Tam Action, Relator and his heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the Government in the Qui Tam Action in order to dismiss the Qui Tam Action, nor any dismissal of the Qui Tam Action shall waive or otherwise affect the ability of the Government to contend that

provisions of the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), and 6 Del. C. 1201 *et seq.*, bar Relator from sharing in the proceeds of this Agreement. Moreover, the Government and Relator, and his heirs successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the percentage, if any, that Relator should receive of any proceeds of the settlement of their claim(s), and that no agreements concerning Relator's share have been reached to date, other than the allocation of the Settlement amount as set forth in Paragraphs III(A) and (B).

L. GVP, together with any of its current and former parent corporations, waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses 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.

M. GVP fully and finally releases the Government, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which GVP has asserted, could have asserted, or may assert in the future against the Government, its agencies, employees, servants, and agents, related to the

Government's investigation and/or prosecution of GVP as to the Covered Conduct from January 1, 2003, through the effective date of this Agreement.

N. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid carrier or intermediary or any State payer, related to the Covered Conduct; and GVP shall not resubmit to any Medicaid carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

O. GVP agrees to the following:

1. Unallowable Costs Defined: to the extent applicable, that 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. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of GVP, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, any State Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

(a) the matters covered by this Agreement,

(b) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement,

(c) GVP's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

(d) the negotiation and performance of this Agreement,

(e) the payments GVP makes to the Government pursuant to this Agreement, including costs and attorneys fees,

(f) any payments GVP may make to Relator, including costs and attorneys' fees and expenses, and

(g) the negotiation of, and obligations undertaken pursuant to, the CIA to: (i) Retain an Independent Monitor; and (ii) prepare and submit reports to the OIG-HHS. However, nothing in this Paragraph III(O)(1)(g) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to GVP. (All costs described or set forth in this Paragraph III(O)(1) are hereafter, "unallowable costs").

2. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in nonreimbursable cost centers by GVP, and GVP 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 GVP or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

3. Treatment of Unallowable Costs Previously Submitted for

Payment: GVP further agrees that within 120 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA 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 GVP 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. GVP agrees that the Government, at a minimum, shall be entitled to recoup from GVP 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 Government reserves its rights to disagree with any calculations submitted by GVP or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on GVP's, or any of its subsidiaries or affiliates', cost reports, cost statements, or information reports:

4. Nothing in this Agreement shall constitute a waiver of the rights of the Government to audit, examine, or re-examine GVP's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

P. 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.

Q. GVP 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.

R. GVP warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent through its payments to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to GVP, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which GVP was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

S. Within 30 days of the Effective Date of this Agreement, the United States and the Delaware Department of Justice through the MFCU will intervene in the Qui Tam Action for the

limited purpose of resolving the Qui Tam Action as to the Covered Conduct. The Government and the Relator shall stipulate to a dismissal of the certain claims in the Qui Tam Action in the form of Exhibit B attached hereto.

T. GVP agrees to bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

U. GVP represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

V. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the District of Delaware, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

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

X. The individuals signing this Agreement on behalf of GVP represent and warrant that they are authorized by GVP to execute this Agreement. The Government signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

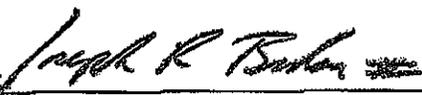
Y. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

Z. This Agreement is binding on GVP's successors, transferees, heirs, and assigns.

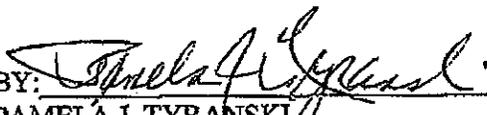
AA. All Parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.

BB. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE STATE OF DELAWARE

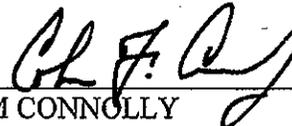
DATED: 5/2/17 BY: 
JOSEPH R. BIDEN, III
Delaware State Attorney General

DATED: 5/2/17 BY: 
DANIEL MILLER
Director, Delaware Medicaid Fraud Control Unit

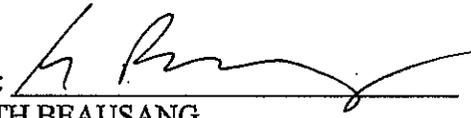
DATED: 5/1/07 BY: 
PAMELA J. TYRANSKI
Deputy Director, Delaware Medicaid Program.

THE UNITED STATES OF AMERICA

DATED: 5/7/07

BY: 
COLM CONNOLLY
United States Attorney
District of Delaware

DATED: 5/11/07

BY: 
SETH BEAUSANG
Assistant United States Attorney

DATED: _____

BY: _____
ALLISON CENDALI
Trial Attorney
United States Department of Justice
Civil Division, Commercial Litigation

DATED: _____

BY: _____
GREGORY E. DEMSKE
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

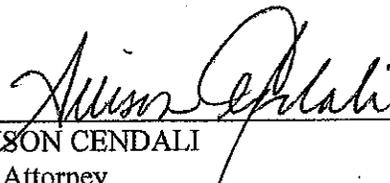
DATED: _____

BY: _____
COLM CONNOLLY
United States Attorney
District of Delaware

DATED: _____

BY: _____
SETH BEAUSANG
Assistant United States Attorney

DATED: _____

BY:  _____
ALLISON CENDALI
Trial Attorney
United States Department of Justice
Civil Division, Commercial Litigation

DATED: _____

BY: _____
GREGORY E. DEMSKE
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: _____
COLM CONNOLLY
United States Attorney
District of Delaware

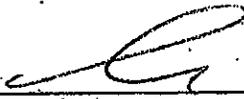
DATED: _____

BY: _____
SETH BEAUSANG
Assistant United States Attorney

DATED: _____

BY: _____
ALLISON CENDALI
Trial Attorney
United States Department of Justice
Civil Division, Commercial Litigation

DATED: 5/1/07

BY: 
GREGORY E. DEMSKE
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

GREEN VALLEY PAVILION, LLC

DATED: 4/27/07

BY: Allen Segal
ALLEN SEGAL
Authorized Member, Green Valley Pavilion, L.L.C.

DATED: 5/1/07

BY: W. Craig Knaup
W. CRAIG KNAUP, ESQUIRE
Counsel for Green Valley Pavilion, L.L.C.

RELATOR

DATED: 4/30/07

BY: Walter T. Decyk, III
WALTER T. DECYK, III

DATED: 4/30/07

BY: Regina D. Poserina
REGINA D. POSERINA, ESQUIRE
Counsel for Relator Walter T. Decyk, III