

SETTLEMENT AGREEMENT

This Settlement Agreement, (the "Agreement"), is entered into by and among the United States of America, acting through the United States Attorney's Office for the Eastern District of Virginia, ("United States") on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services (HHS), the Commonwealth of Virginia, acting through the Office of the Virginia Attorney General's Medicaid Fraud Control Unit, ("MFCU"), the Virginia Department of Medical Assistance Services, ("DMAS"), (collectively the "Commonwealth"), and Agape Health Management, Inc. d/b/a Agape Adult Day Healthcare Center ("Agape"), through their authorized representatives. The United States and the Commonwealth are together referred to as "the Government." The Government and Agape are together referred to as "the Parties."

RECITALS

A. Agape is a Virginia Medicaid provider and holds a Virginia Medicaid provider agreement with DMAS dated July 30, 2007. Agape operates a facility located at 5701 General Washington Drive, Suite A, in Alexandria, VA 22312-2408 ("ADHC facility") that provides Adult Day Health Care ("ADHC services"). ADHC services include community-based health, therapeutic, and social services designed to meet the specialized needs of elderly and disabled recipients. Agape provides transportation services for Medicaid recipients to and from its ADHC facility.

B. The Government contends that Agape submitted or caused to be submitted false and/or fraudulent claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396 - 1396w-5, ("Medicaid Program").

C. The Government contends that it has certain civil claims against Agape. Specifically, on certain dates between June 15, 2009 and September 30, 2011, Agape knowingly presented or caused to be presented false and/or fraudulent claims to the Virginia Medicaid Program for ADHC

and transportation services. The claims were false and/or fraudulent for one or more of the following reasons:

- i. Agape knowingly presented or caused to be presented false and/or fraudulent claims for ADHC and transportation services purportedly provided to Virginia Medicaid recipients that were not present at or transported to the ADHC facility on the claimed dates of service.
- ii. Agape knowingly presented or caused to be presented false and/or fraudulent claims for ADHC and transportation services purportedly provided to Virginia Medicaid recipients that were not present at or transported to the ADHC facility on March 4, 2011, when the facility was closed.
- iii. Agape knowingly made, used, or caused to be made or used false or fraudulent DMAS 302 forms for ADHC services purportedly provided to Medicaid recipients that were not present or transported to the ADHC facility on the claimed dates of service.

As a result of Agape's above described conduct, false and/or fraudulent claims for reimbursement were submitted to the Virginia Medicaid Program for ADHC and transportation services that were not rendered.

D. All of the conduct described in the above Recital paragraph C is hereinafter known as the "Covered Conduct".

E. This agreement is made in compromise of disputed claims. This agreement is neither an admission of facts or liability by Agape, nor a concession by the Government that its allegations are not well founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation concerning the above Covered Conduct, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Agape shall pay to the United States and the Commonwealth Three Hundred Eighty-Five Thousand Nine Hundred Seventeen Dollars (\$385,917.00) (the "Settlement Amount"). The Settlement Amount shall be paid within thirty (30) business days of counsel for Agape receiving written notice that the Agreement has been approved by all applicable authorities of the Government (the "Government Notice"). The Settlement Amount shall be paid to the United States and the Commonwealth as follows:

a. Agape shall pay to the United States the sum of One Hundred Ninety-One Thousand One Hundred Six Dollars and Ten Cents (\$191,106.10) (the "Federal Share"). The Federal Share shall be paid by electronic funds transfer pursuant to written instructions from the United States Attorney's Office for the Eastern District of Virginia.

b. Agape shall pay to the Commonwealth the sum of One Hundred Ninety-Four Thousand Eight Hundred Ten Dollars and Ninety Cents (\$194,810.90) (the "State Share"). The State Share shall be paid by paper check pursuant to written instructions from the Virginia Attorney General's Office.

2. Agape expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548 (a)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount and compliance with this Agreement.

3. The Parties agree that all statute of limitations defenses, and any and all other time-related defenses applicable to the civil claims that the Government could assert for the Covered

Conduct, shall be tolled from the Effective Date of this agreement until final payment is made by Agape as provided above in Terms and Conditions, ¶ 1.

4. RELEASE.

a. Subject to the exceptions in Paragraph 5 below (Excluded Claims), and conditioned upon Agape's full payment of the Settlement Amount, the United States releases Agape, together with its predecessors, and its current and former parents, division, subsidiaries, affiliates, successors, and assigns, and their current and former shareholders, owners, officers, directors, employees and agents from any civil or administrative monetary claims the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and common law theories of payment by mistake, unjust enrichment, and fraud.

b. Subject to the exceptions in Paragraph 5 below (Excluded Claims), and conditioned upon Agape's full payment of the Settlement Amount, the Commonwealth releases Agape from any civil or administrative monetary claims the Commonwealth has or may have for the Covered Conduct under the Virginia Fraud Against Taxpayers Act ("VFATA"), Va. Code Ann. § 8.01-216.1, et seq.; the Virginia Medicaid Fraud Statute, Va. Code Ann. § 32.1-312, (c); and common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. EXCLUDED CLAIMS.

a. Notwithstanding the release given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

(1) Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any liability based upon obligations created by this Agreement;

(6) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, but excluding liability for any conduct included in the Covered Conduct;

(7) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and

(8) Any liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Agape) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted or charged, or who enter into a plea agreement, related to the Covered Conduct.

b. Notwithstanding the release given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims of the Commonwealth are specifically reserved and are not released:

- (1) Any liability arising under the Commonwealth's revenue codes;
- (2) Any criminal liability;
- (3) Any liability to the Commonwealth for any conduct other than the Covered Conduct;
- (4) Any civil or administrative liability that any person or entity, including Agape, has or may have to the Commonwealth or to individual consumers or Commonwealth program payors under any statute, regulation or rule not expressly covered by the release in paragraph 4 of this Agreement, including but not limited to, any and all of the following claims: (i) Commonwealth or federal antitrust violations; (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (5) Any liability which may be asserted on behalf of any other payors or insurers;
- (6) Any liability based upon obligations created by this Agreement;
- (7) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, but excluding liability for any conduct included in the Covered Conduct;
- (8) Any administrative liability, including but not limited to: mandatory exclusion, permissive exclusion or termination of Agape's Virginia Medicaid Provider Participation Agreement; and

(9) Any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Agape, but excluding liability for any conduct included in the Covered Conduct.

6. Agape waives and shall not assert any defenses it 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.

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

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

9. 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 other state payor, related to the Covered Conduct; and Agape agrees not to resubmit to any Medicare contractor or any state payor

any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

10. Agape 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 Agape, including Agape's present or former officers, directors, employees, shareholders, and agents, in connection with:

- (1) the matters covered by this Agreement;
- (2) the Government's audits and civil and/or criminal investigation of the matters covered by this Agreement;
- (3) Agape's investigation, defense, and corrective actions undertaken in response to the Government's audits and civil and/or criminal investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payments Agape makes to the United States and the Commonwealth 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 Agape, and Agape 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 Agape or any of Agape's subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Agape further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicaid 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 Agape or any of Agape's 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. Agape agrees that the Government, at a minimum, shall be entitled to recoup from Agape 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 Government and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by Agape or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Agape or any of Agape's subsidiaries' or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the Government's right to audit, examine, or re-examine Agape's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

11. This Agreement is intended to be for the benefit of the Parties only, and by this instrument, the Parties do not release any liability or claims against any other person or entity.

12. Agape agrees that Agape will waive and shall not seek payment for any of the health care billings related to the Covered Conduct from the Government, any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

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

14. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

15. This agreement is governed by the laws of the United States and the laws of the Commonwealth. The exclusive jurisdiction and venue for any dispute relating to this agreement shall be (i) when the dispute includes the United States, the United States District Court for Eastern District of Virginia; or (ii) when the dispute does not involve the United States, the Circuit Court for the City of Richmond. 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. This Agreement constitutes the complete agreement between the Parties.

16. This Agreement embodies the entire understanding between the Parties with respect to the subject matter hereof, and any and all prior understandings, oral and written proposals and

communications or other agreements are merged herein and are no longer valid or enforceable. The Parties acknowledge that they have not been induced to enter in this Agreement by any representation or statement, oral or written, not contained in this Agreement. This Agreement may not be amended except by written consent of the Parties.

17. The undersigned signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below. The undersigned Government signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the Government through their respective agencies and departments. Counsel for Agape has executed this Agreement solely for the purpose of representing that Agape had legal representation in negotiating this Agreement.

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

19. This Agreement is binding on each of Agape's successors, transferees, heirs, and assigns.

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

21. 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

DANA J. BOENTE
United States Attorney

DATED: 5/3/16

BY: Monika Moore
MONIKA MOORE
GERARD MENE
Assistant United States Attorney
Eastern District of Virginia

DATED: 4/25/16

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

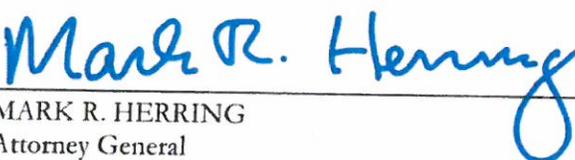
Commonwealth of Virginia

By: 
CYNTHIA B. JONES
Director
Department of Medical Assistance Services

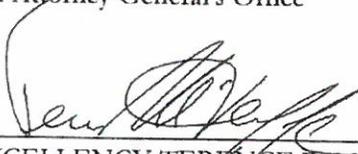
Dated: 4/18/16

By: 
RANDALL L. CLOUSE
Director and Chief
Health Care Fraud & Elder Abuse
Virginia Attorney General's Office

Dated: 4/12/16

By: 
MARK R. HERRING
Attorney General
Virginia Attorney General's Office

Dated: 4/19/16

By: 
HIS EXCELLENCY TERENCE R. MCAULIFFE
Governor of Virginia

Dated: 4/25/16

Agape

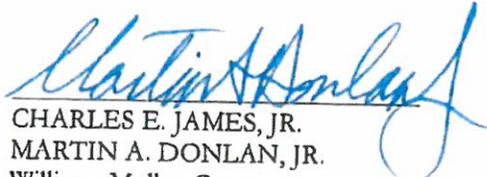
DATED: 4/11/2016

BY:


DONG CHUL CHOI, as authorized
representative for Agape

DATED: 4/15/2016

BY:


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