

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"); the Department of Defense Health Agency ("DHA"), acting on behalf of the TRICARE Program; the United States Department of Veterans Affairs ("VA"); the Office of Inspector General of the United States Railroad Retirement Board ("RRB") (collectively, the "United States"); Vericare Management, Inc. ("Vericare"); and Bart Rossi (the "Relator"). The United States, Vericare, and the Relator, through their authorized representatives, are collectively referred to as the "Parties."

RECITALS

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

A. Vericare Management, Inc. is a privately-held corporation based in San Diego, California which provides psychiatric and psychological services focused on geriatric patients in long-term care and skilled nursing facilities. Vericare provides services in New Jersey, California, Pennsylvania, Texas, Florida, Indiana, Delaware, and Tennessee. Vericare previously provided services in North Carolina.

B. Relator Bart Rossi is an individual resident of the State of New Jersey. On November 1, 2013, the Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States of America, ex rel. Bart Rossi v. Vericare*, Civil Action No. 13-6884, under the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). The *qui tam* complaint alleged, among other things, that Vericare improperly billed the United States for services rendered at

nursing homes and skilled nursing facilities. Specifically, the complaint alleged that Vericare sought and obtained “standing orders” or other agreements from such facilities under which Vericare’s clinicians performed evaluations on all new admissions to the facility regardless of whether a physician provided a patient-specific order indicating that such an evaluation was medically necessary.

C. The United States contends that Vericare submitted or caused to be submitted improper claims for payment to, among other payors, the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1; the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5; the TRICARE Program, 10 U.S.C. §§ 1071-1110b; the Department of Veterans Affairs, Veterans Health Administration, 38 U.S.C. Chapter 17; and the Railroad Retirement Medicare Program, administered under the Railroad Retirement Act of 1974, 45 U.S.C. §§ 231-231v, by the United States Railroad Retirement Board.

D. Covered Conduct. The United States contends that it has certain civil claims against Vericare under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, other federal statutes, or common law doctrines, for engaging in the following alleged conduct:

During the period from January 1, 2012, through December 31, 2014, at 128 facilities that the United States has identified (the “Facilities”) in a letter dated October 19, 2015, from Assistant U.S. Attorney Bernard J. Cooney to Michael Kendall, Esq., counsel for Vericare, and Lisa M. Fittipaldi, Esq., counsel for relator Bart Rossi, which this Agreement incorporates by reference, Vericare sought and obtained “standing orders” or other agreements from the Facilities under which Vericare’s clinicians performed evaluations on all new admissions to the Facility. These evaluations were

conducted regardless of whether a physician provided a patient-specific order indicating that such an evaluation was medically necessary. Vericare improperly submitted or caused to be submitted claims to the United States pursuant to these “standing orders” or other agreements for diagnostic interviews, evaluations, and examinations under Current Procedural Terminology (“CPT”) codes 90791, 90792, 90801, and 90802.

The conduct described in this Paragraph D is referred to below as the “Covered Conduct.”

E. The United States and the Relator have reached an agreement with respect to the Relator’s claim of entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement.

F. This Agreement is neither an admission of any wrongdoing or any liability by Vericare, nor a concession by the United States that its claims are not well founded.

G. 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. Vericare shall pay to the United States \$592,400 plus interest accrued at the rate of 2.0% per annum on the Settlement Amount from August 24, 2015 (the “Settlement Amount”), no later than 15 business days after the Effective Date of this Agreement. Vericare agrees to pay 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 New Jersey.

2. Conditioned upon the United States receiving the entire Settlement Amount from Vericare and as soon as feasible after receipt, the United States shall pay to the Relator, through his legal counsel and by electronic funds transfer to an escrow account, twenty percent (20%) of the Settlement Amount actually recovered under this Agreement.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Vericare's full payment of the Settlement Amount, the United States releases Vericare 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.

4. Subject to the exceptions in Paragraph 8 below, and conditioned upon Vericare's full payment of the Settlement Amount, the Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Vericare from any civil monetary claim that the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Notwithstanding the releases given in Paragraphs 3 and 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:

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

6. The Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement and 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 the Relator's receipt of the payment described in Paragraph 2, the Relator and his 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 claims in the Civil Action against Vericare, or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement or the Civil Action against Vericare.

7. Conditioned upon the Relator's receipt of the payment described in Paragraph 2 and subject to the exceptions in Paragraph 8 below, the Relator, for himself, and for his heirs, successors, attorneys, agents and assigns, releases Vericare and its officers, agents, and employees, from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, including, but not limited to, any liability to the Relator arising from the filing of the Civil Action, or under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, whether or not known or suspected at this time, with the express exception of those claims enumerated in Paragraph 8 below.

8. Notwithstanding the release given in Paragraph 7 of this Agreement, or any other term of this Agreement, the following claims of the Relator are specifically reserved and are not released:

- a. Count Four in the Civil Action: Violations of the Conscientious Employee Protections Act (N.J.S.A. 34:19-1);
- b. Count Five in the Civil Action: Violations of the New Jersey Law Against Discrimination: Age Discrimination (N.J.S.A. 10:5-1);
- c. Count Six in the Civil Action: Violations of the New Jersey Law Against Discrimination: Hostile Work Environment (N.J.S.A. 10:5-1); and
- d. any attorneys' fees award under 31 U.S.C. § 3730(d)(1).

9. Vericare, and its principals, officers, employees, attorneys, agents, and

assigns, release the Relator from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action under the False Claims Act, 31 U.S.C. §§ 3729-3733.

10. Vericare 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. 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.

11. Vericare 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 Vericare 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.

12. 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.*, a Medicare Administrative Contractor, fiscal intermediary, or carrier); TRICARE fiscal intermediary, carrier, or contractor; Federal Employees Health Benefits Program

("FEHBP") carrier or payer; or any state payer, related to the Covered Conduct; and Vericare agrees not to resubmit to any Medicare carrier or intermediary; TRICARE fiscal intermediary, carrier, and/or contractor; FEHBP fiscal agent; or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

13. Vericare 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 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Vericare, 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 and any criminal investigation(s) of the matters covered by this Agreement;
- 3) Vericare's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- 4) the negotiation and performance of this Agreement and any plea agreement; and
- 5) the payment Vericare makes to the United States pursuant to

this Agreement and any payments that Vericare may make to the Relator, including costs and attorneys' fees; are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and FEHBP (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Vericare, and Vericare 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 Vericare or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Vericare further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, 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 Vericare 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. Vericare agrees that the United States, at a minimum, shall be entitled to recoup

from Vericare 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 or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Vericare or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Vericare 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 Vericare's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. Vericare agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Vericare 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 employees for interviews and testimony, consistent with the rights and privileges of such individuals.

15. 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 16 (waiver for beneficiaries paragraph), below.

16. Vericare 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.

17. Upon receipts of the payments described in Paragraphs 1 and 2 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 Fed. R. Civ. P. 41(a)(1) only as to Counts One, Two, Three, Seven, Eight, and Nine asserted in that action against Vericare (the "False Claims Counts"). As set forth in Paragraph 8 above, all other claims of the Relator shall not be dismissed. Such dismissal of the False Claims Counts shall be with prejudice to the Relator as to those counts, with prejudice to the United States as to the Covered Conduct, and without prejudice to the United States as to any other claims asserted.

18. Except as otherwise provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. 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.

20. 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 New Jersey. 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.

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

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

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

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

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

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

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

ON BEHALF OF THE UNITED STATES OF AMERICA

DATED: 10/29/15

BY: Bernard J. Cooney
BERNARD J. COONEY
Assistant U.S. Attorney
United States Attorney's Office
District of New Jersey

APPROVED:

Jacob T. Elberg
JACOB T. ELBERG
Chief, Health Care & Government Fraud Unit
United States Attorney's Office
District of New Jersey

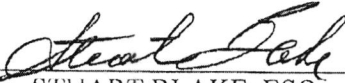
DATED: 10/28/15

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


BR

ON BEHALF OF VERICARE MANAGEMENT, INC.

DATED: 10/19/15

BY: 
STUART BLAKE, ESQ.
General Counsel
Vericare Management, Inc.
4715 Viewridge Avenue
San Diego, California 92123

DATED: 10/19/15

BY: 
MICHAEL KENDALL, ESQ.
McDermott Will & Emery LLP
28 State Street
Boston, Massachusetts 02109
Counsel for Vericare Management, Inc.

ON BEHALF OF THE RELATOR BART ROSSI

DATED: _____

BY: _____
BART ROSSI, Relator

DATED: _____

BY: _____
LISA M. FITTIPALDI, ESQ.
DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, P.C.
15 Mountain Blvd.
Warren, New Jersey 07059
Counsel for Relator Bart Rossi

ON BEHALF OF VERICARE MANAGEMENT, INC.

DATED: _____

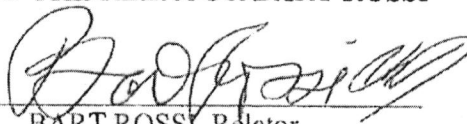
BY: _____
STUART BLAKE, ESQ.
General Counsel
Vericare Management, Inc.
4715 Viewridge Avenue
San Diego, California 92123

DATED: _____

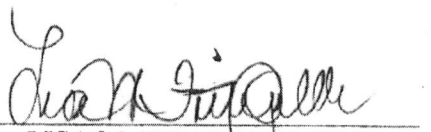
BY: _____
MICHAEL KENDALL, ESQ.
McDermott Will & Emery LLP
28 State Street
Boston, Massachusetts 02109
Counsel for Vericare Management, Inc.

ON BEHALF OF THE RELATOR BART ROSSI

DATED: 10/21/15

BY: 
BART ROSSI, Relator

DATED: 10/27/15

BY: 
LISA M. FITTIPALDI, ESQ.
DiFrancesco, Bateman, Kunzman,
Davis, Lehrer & Flaum, P.C.
15 Mountain Blvd.
Warren, New Jersey 07059
Counsel for Relator Bart Rossi