

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among: (a) the United States of America, acting through the United States Department of Justice and on behalf of the Department of Health and Human Services, Office of Inspector General (“HHS-OIG”) (collectively, “United States”); (b) the State of California, acting through the California Department of Justice, Office of the Attorney General, Division of Medi-Cal Fraud and Elder Abuse, and through the California Department of Health Care Services (“DHCS”) (collectively, “California”) (the United States and California are collectively referred to as “the Government”); and (c) Clinica Sierra Vista (“CSV”) (hereinafter the United States, California, and CSV are collectively referred to as “the Parties” and each is a “Party”) through their authorized representatives.

RECITALS

A. CSV is a non-profit Federally Qualified Health Center (“FQHC”) that provides primary and preventive care serves to primarily low-income individuals and families in Fresno and Kern counties. CSV is designated as an FQHC by virtue of its receipt of a federal “health center” grant authorized under Section 330 of the Public Health Services Act. The conditions of Section 330 grants include requirements that the health center be located in a medically-underserved area, it serves anyone regardless of the ability to pay for those services and that it participate in its state Medicaid program which, in California, is the California Medical Assistance Program (“Medi-Cal”).

B. DHCS is the administrator of Medi-Cal.

C. The Benefits Improvement and Protection Act (“BIPA”), Welfare and Institutions Code Section 14132.100, and 42 U.S.C. section 1396a (bb) authorize FQHCs to receive payment

for providing covered services to Medi-Cal eligible individuals under a Prospective Payment System (“PPS”) methodology. The PPS rate covers 100 percent of the FQHC’s reasonable costs for providing services to Medi-Cal beneficiaries.

D. For beneficiaries who participate in Medi-Cal Managed Care and/or are enrolled in Medicare, DHCS pays the FQHC a supplemental payment, commonly referred to as the wrap around payment, that is equal to the difference between the amount due at the FQHC’s PPS rate and the amount received by third-party payers. DHCS pays the supplemental payment in two stages – an interim payment, referred to by DHCS as a differential rate, is paid on a per visit basis each time the FQHC files a claim, and, if necessary, a final payment once the reconciliation process is complete. If the amount of Medi-Cal Program interim payments and third party payments received by the FQHC is less than the amount of actual visits reimbursed at the PPS rate, the FQHC will be paid the difference. However, if the amount of Medi-Cal Program interim payments and third party payments is more than the amount of actual visits reimbursed at the PPS rate, the FQHC must repay DHCS the difference.

E. At the end of each FQHC’s fiscal year, FQHCs must file a “Federally Qualified Health Center (FQHC)/Rural Health Clinic (RHC) Prospective Payment System (PPS) Reconciliation Request” (“reconciliation request”). The total amount of Medi-Cal interim payments and third party payments received by the FQHC, e.g. Medicare, Managed Care Organization (MCO), and other party third party payments, if applicable, is reviewed against the number of visits for which the FQHC was reimbursed by the Medi-Cal Program at its PPS rate.

F. Pursuant to Welfare and Institutions Code Section 14132.100(h), in the reconciliation requests, FQHCs must include all payments received from Medicare, Medi-Cal Managed Care Plans (capitated and fee-for-service), and all other third party sources for the

provision of FQHC services to Medi-Cal beneficiaries, regardless of whether services were rendered and regardless of whether the third party payments resulted in a billable visit to the Medi-Cal Program.

G. By letter dated April 12, 2019, CSV informed the Government that, as part of an internal investigation commissioned by its new Chief Executive Officer (“CEO”) and approved by CSV’s Board of Directors, CSV had identified potential violations of the False Claims Act, 31 U.S.C. §§ 3729-3733, and the California False Claims Act, Government Code section 12650, *et seq.*, and expressed its intent to voluntarily self-disclose information known by CSV about the potential violations. By in-person presentation made on May 3, 2019, CSV disclosed to the Government what it had found after its internal investigation.

H. CSV’s voluntary self-disclosure revealed, among other things, the following:

a. For each fiscal year during the period April 1, 2010 through March 31, 2015, CSV, by and through certain CSV executives, including its founder and former CEO, and former Chief Financial Officer, (i) submitted false information in its annual reconciliation reports by omitting Medi-Cal Managed Care and third-party capitated payments it had received in each fiscal year, and (ii) knowingly failed to correct this information after it later knew or should have known that the information was false and resulted in uncorrected, significantly higher wrap around payments from DHCS than CSV would have been entitled to had it submitted accurate reconciliation requests.

b. For each fiscal year during the period April 1, 2015 through March 31, 2017, CSV—by and through the founder and former CEO and former CFO—knowingly submitted false information in its reconciliation requests by including some, but not all, Medi-Cal Managed Care and third party payments it had received. This partial reporting

resulted in significantly higher wrap payments from DHCS than appropriate.

I. In addition to self-disclosing the Covered Conduct to the Government, CSV cooperated with the Government's subsequent investigation.

J. The United States and State of California contend that they have certain civil claims against CSV for claims it submitted or caused to be submitted for payment to the California Medicaid Program, Medi-Cal, 42 U.S.C. § 1396–1396w-5, in violation of the False Claims Act, 31 U.S.C. § 3729 et seq., and California False Claims Act, Cal. Gov't Code § 12650 et seq. Specifically, the United States and State of California allege that for the time period April 1, 2011 through March 31, 2017 (fiscal years 2011 through 2017), CSV knowingly submitted or caused to be submitted false reconciliation requests to Medi-Cal by knowingly failing to accurately disclose all Medi-Cal Managed Care and third party plan payments in its reconciliation requests, resulting in significantly higher wrap payments to CSV than would have been due had CSV submitted accurate reconciliation requests. The conduct described in Paragraphs H and J is referred to below as the "Covered Conduct."

K. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the foregoing dispute, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Payment to the Government. Not later than thirty (30) days after the Effective Date of this Agreement, CSV shall pay the Government \$25,988,208.25, plus interest on that amount at a rate of 0.75 percent per year ("handshake interest") starting thirty (30) calendar days from the Effective Date of this Agreement (the "Settlement Amount") as follows:

(a) \$10,395,283.20, plus any handshake interest, to the United States by electronic funds

transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of California; and,

(b) \$15,592,924.95, plus any handshake interest, to California pursuant to written instructions to be provided by the California Attorney General's Office.

2. Of the Settlement Amount, \$14,203,107.00 constitutes restitution, with \$5,681,242.80 of that restitution allocated to the United States, and \$8,521,864,20 of that restitution allocated to the State of California. An additional \$1,132,771.00 of the settlement amount results from miscellaneous audit adjustments. The repayment of these funds due under the reconciliation process closes out the managed care reconciliations for CSV's fiscal years 2011 through 2017.

3. The Government's Releases of CSV:

a. Release of CSV by the United States. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon CSV's full payment of the Settlement Amount, the United States releases CSV and its current and former subsidiaries and parents, successors and assigns 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.

b. Release of CSV by California. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon CSV's full payment of the Settlement Amount, California releases CSV and its current and former subsidiaries and parents, successors and assigns from any civil or administrative monetary claim California has for the

Covered Conduct under the California False Claims Act, Cal. Government Code §§ 12650-12656; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Administrative Actions:

a. HHS-OIG. In consideration of the obligations of CSV in this Agreement, and conditioned upon CSV's full payment of the Settlement Amount, HHS-OIG agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against CSV 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 this Paragraph and in Paragraph 5 (concerning excluded claims), below. HHS-OIG expressly reserves all rights to comply with any statutory obligations to exclude CSV from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes HHS-OIG from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5, below.

b. DHCS. In consideration of the obligations of CSV in this Agreement and CSV's full payment of the Settlement Amount, DHCS agrees to release CSV from, and to refrain from instituting, directing, or maintaining against CSV, any administrative action seeking permissive exclusion from Medi-Cal for the Covered Conduct. DHCS expressly reserves all rights to comply with any mandatory statutory obligations to suspend or exclude CSV from Medi-Cal or any other program based upon the Covered Conduct.

5. Exceptions to the Government's Releases. Notwithstanding the releases given in this Agreement, or any other term of this Agreement, the following claims of the Government

are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (“Internal Revenue Code”) or under California’s Taxation and Revenue Code;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from federal or state health care programs;
- d. Any liability to the United States (or its agencies) or to California (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;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and,
- j. Any liability of individuals.

6. Release of the Government by CSV. CSV fully and finally releases the Government and their respective agencies, officers, agents, employees, and servants from any claims (including attorneys’ fees, costs, and expenses of every kind and however denominated) that CSV has asserted, could have asserted, or may assert in the future against the Government and their respective agencies, officers, agents, employees, and servants related to, or arising out of, the Covered Conduct, the Government’s investigation of the Covered Conduct, and any

ensuing civil prosecution. With regard to the release set forth in this Paragraph, Defendants hereby expressly waive all rights they may have by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7. Double Jeopardy and Excessive Fines Clauses. CSV 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 United States Constitution, the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, or under Article 1, §§ 15 and 24 of the California Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

8. Denial of Claims. 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 or Medicaid carrier, contractor, or intermediary related to the Covered Conduct; and CSV agrees not to resubmit to any Medicare or Medicaid carrier, contractor, or intermediary any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims, and to withdraw any such pending appeals.

9. Unallowable Costs. CSV 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 CSV, and/or by its respective present or former officers, directors, employees, shareholders, and agents in connection with:

1. the matters covered by this Agreement;
2. the Government's audit(s) and civil and any criminal investigation(s) of any of the matters covered by this Agreement;
3. CSV'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 attorneys' fees);
4. the negotiation and performance of this Agreement; and,
5. the payment CSV makes to the Government 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"), or any other federal or state program (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by CSV, and CSV shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States, California, 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 CSV or

any of its respective subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs, or to any other federal or state program.

c. Treatment of Unallowable Costs Previously Submitted for Payment: CSV 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 included in payments previously sought from the United States, California, 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 CSV or any of its respective 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. CSV agrees that the Government, at a minimum, shall be entitled to recoup from them 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 pursuant to the direction of the United States Department of Justice and/or the affected agencies. The Government reserve their rights to disagree with any calculations submitted by CSV or any of its respective subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on CSV or any of its respective subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

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

11. Voluntary Agreement. Each Party and signatory to this Agreement represents that it and she/he freely, voluntarily, knowingly, and deliberately enters into this Agreement without any degree of duress, compulsion, or misconduct by any of the Parties.

12. Benefit of the Parties. 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 the Paragraph immediately below (waiver for beneficiaries).

13. Waiver for Health Care Beneficiaries. CSV agrees that it 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.

14. Financial Condition. CSV 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 shall remain solvent following payment to the Government of the Settlement Amount.

15. Governing Law. 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 Eastern District of California.

16. Complete Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and may not be modified, amended, or terminated except by a written agreement signed by the Parties specifically referring to this Agreement and its relevant portions. Each of the Parties acknowledges that, except as expressly set forth in this Agreement, no representations of any kind or character have been made by any

other party or that party's agents, representatives, or attorneys to induce execution or delivery of this Agreement. Agreement Drafted by All Parties. This Agreement shall be deemed to have been drafted by all Parties to this Agreement and therefore shall not be construed against any Party for reasons of drafting.

17. CSV's Successors. This Agreement is binding on CSV's successors, transferees, and assigns.

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

19. Headings. The headings in this Agreement are for convenience only, do not constitute a part of this Agreement, and shall not limit or affect any of its provisions.

20. Capacity to Execute. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below. Each signatory represents that he or she has the full power, authority, and competence necessary to enter into this Agreement.

21. Counterparts and Facsimiles. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Facsimiles and electronic versions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

22. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement").

In Witness Whereof, the Parties, through their duly authorized representatives, hereunder set their hands.

THE UNITED STATES OF AMERICA

PHILLIP A. TALBERT
United States Attorney

DATED: 2/1/2023

BY: 

COLLEEN KENNEDY
Assistant United States Attorney
Eastern District of California

OFFICE OF THE INSPECTOR GENERAL, HEALTH
AND HUMAN SERVICES

DATED: 01/23/2023

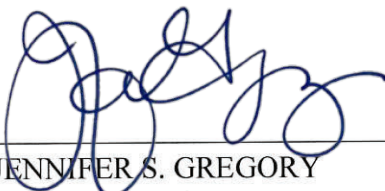
BY: 

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THE STATE OF CALIFORNIA

ROB BONTA
Attorney General for the State of California

DATED: 2/1/2023

BY: 

JENNIFER S. GREGORY
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California Department of Justice
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Division of Medi-Cal Fraud and Elder Abuse

DEPARTMENT OF HEALTH CARE SERVICES

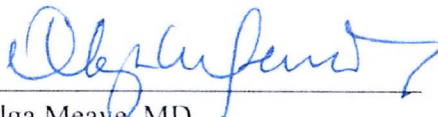
DATED: 1-30-23

BY: 

MICHELLE BAASS
Director


CLINICA SIERRA VISTA

DATED: 2/1/23

BY: 


Olga Meave, MD
Chief Executive Officer

DATED: 2/1/23

BY: 

Michael Cosimano, Ed.D
Board President

DATED: 2/1/23

BY: 

Edward T. Waters
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