

MUTUAL SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered between the State of Alaska, Department of Health and Social Services ("Department"), and Medicaid provider Valdez Senior Citizens Center ("VSCC"). The Department and VSCC are referred to collectively in this Agreement as the "Parties."

WHEREAS, pursuant to 7AAC 105.230, VSCC is required to maintain accurate financial, clinical, and other records necessary to support the care and services for which Medicaid payment is requested; and

WHEREAS, VSCC provides personal care assistance services ("PCA services") through Alaska Medicaid provider identification number 1028216 and provides home and community based waiver services ("waiver services") through Alaska Medicaid provider identification number 1005047; and

WHEREAS, the Department's contracted auditor Myers and Stauffer LC completed audits of both VSCC's PCA services and VSCC's waiver services rendered during the period January 1, 2012, through December 31, 2012 on the Department's behalf ("Audits"); and

WHEREAS, the Audits calculated extrapolated overpayments to VSCC for PCA services in the amount of \$211,999.69 and calculated extrapolated overpayment to VSCC in the amount of \$61,677.66 for waiver services for a combined overpayment total of \$273,677.35; and

WHEREAS, VSCC sought reconsideration of the Audits' overpayment findings; and

WHEREAS, the Parties desire to settle this matter without litigation;

NOW, THEREFORE, in exchange for the mutual promises contained in this Agreement, the Parties agree to settle their disputes pursuant to the following terms:

(1) **Release**

(a) The Department and its agents, employees, adjusters, servants, attorneys, officers, successors in interest, heirs, assigns, and personal representatives do hereby release and forever discharge VSCC and its agents, employees, adjusters, servants, attorneys, officers, successors in interest, heirs, assigns and personal representatives from any and all claims, actions, causes of action, suits, controversies, debts, agreements, promises, claims, and demands of every kind and nature, mature or to mature in the future, for and by reason of any damages, losses, costs, expenses, and compensation arising out of, or in connection with Myers & Stauffer's Audits of Medicaid payments made to VSCC during the Audit period.

(b) VSCC and its agents, employees, adjusters, servants, attorneys, officers, successors in interest, heirs, assigns, and personal representatives do hereby release and forever discharge the Department, its agents, employees, adjusters, servants, attorneys, officers, successors in interest, heirs, assigns and personal representatives from any and all claims, actions, causes of action, suits, controversies, debts, agreements, promises, claims, and demands of every kind and nature, mature or to mature in the future, for and by reason of any damages, losses, costs, expenses, and compensation arising out of, or in connection with Myers & Stauffer's Audits of Medicaid payments made to VSCC during the Audit period.

(c) In exchange for the foregoing, the Parties agree VSCC will reimburse the Department \$225,000.00 within 60 days of this agreement being fully executed to resolve the combined overpayment total of \$273,677.35 from the Audits.

(2) **No Admission of Liability or Fault.** This Agreement is the result of a compromise of disputed claims that arose out of the Audits and does not constitute an admission of liability or fault by VSCC.

(3) **Waiver of Offsets.** By agreeing to pay the Department \$225,000.00 for the Audits, VSCC waives any rights to additional offsets that might be credited to it.

(4) **Dismissal of Appeal.** In exchange for the promises and understandings contained herein, VSCC agrees that it will not appeal the Audits results to the Office of Administrative Hearings.

(5) **Reservation of Rights.** If, for any reason, VSCC does not meet any of its obligations outlined in this Agreement, the Department reserves the right to offset the full overpayment total of \$273,677.35 against Medicaid payments otherwise due to VSCC.

(6) **Attorney Fees and Costs.** The Parties agree to bear their own costs including any attorney fees with respect to this matter.

(7) **Complete Agreement.** This Agreement contains the entire Agreement between the Parties with respect to this matter. This Agreement may be amended only in writing, signed by all Parties, with specific reference to this Agreement.

(8) **Notices.** Any notice contemplated or required by the terms of this Agreement, including remittance of any sums owed, are to be addressed to the Parties by regular or certified mail with postage pre-paid. Such communications to be addressed as follows:

If to the Department:

Department of Health and Social Services
Program Integrity Unit
P.O. Box 240249
Anchorage, AK 99524
Attn: Mr. Douglas W. Jones, Program Manager

If to Provider:

Valdez Senior Citizens Center
Attention: Deborah Plant, Executive Director
1300 E. Hanagita
PO Box 1635
Valdez, AK 99686

(9) **Interpretation.** This Agreement is made and entered into in the State of Alaska and shall in all respects be interpreted, enforced, and governed by and according to the laws of the State of Alaska.

(10) **Acknowledgement.**

(a) The Parties acknowledge that the terms of this Agreement are enforceable and are not mere recitals.

(b) The Parties acknowledge that this Agreement is entered into in good faith for the purpose of full and final settlement and compromise of any and all claims from the Audit period, disputed or otherwise, as referenced herein. It is expressly understood that this Agreement is based upon and pertains only to the specific facts of this matter. VSCC acknowledges that nothing in this Agreement limits the Department's ability to review and determine eligibility for payment any claims submitted by VSCC outside of the Audit period.

(c) VSCC acknowledges that the terms of this Agreement do not preclude the imposition of civil or criminal penalties by other federal, state or local agencies, other than the Department, as a result of the Medicaid claims submitted by VSCC for services rendered during the Audit period.

(d) All Parties represent that the terms of this Agreement have been carefully read, are understood, and are voluntarily accepted by each.

(e) VSCC acknowledges that nothing in this Agreement negates their responsibility to comply with applicable statutes and regulations governing payment of Medicaid services to provider.

(f) VSCC acknowledges that nothing in this Agreement shall be construed to limit or affect the State of Alaska's ability to promulgate regulations with respect to the Alaska Medicaid Program or Medicaid Providers in accordance with the Administrative Procedures Act.

(11) **Signatory Representation and Warranty.**

(a) VSCC represents and warrants that it has taken all actions necessary and proper to allow it to enter into this Agreement, and that Debra Plant in her role as Executive Director for VSCC has been duly authorized to take any and all actions necessary, now or in the future, to effectuate the provisions of this Agreement. VSCC further represents and warrants that it may consult with an attorney before signing this Agreement and is signing this Agreement without any coercion whatsoever.

(b) Pursuant to AS 09.50.300, the Attorney General is authorized to enter into this Agreement on behalf of the State of Alaska.

(12) **Third Party Beneficiaries.** This Agreement is not intended to confer any benefits on any third party.

(13) **Captions.** The captions used herein are for purposes of convenience only and are of no legal force or effect.

(14) **Severability.** If any portion of this Agreement is found to be invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates as set forth below.

**JAHNA LINDEMUTH
ATTORNEY GENERAL**

Date: 4/24/18

By:  _____

Scott D. Friend
Assistant Attorney General
Alaska Bar No. 0605011

DEPARTMENT OF HEALTH AND SOCIAL SERVICES, PROGRAM INTEGRITY

Date: 4/24/18

By: 
Douglas W. Jones
Program Integrity Unit, Manager

VALDEZ SENIOR CITIZENS CENTER

Date: _____

By: _____
Deborah Plant
Executive Director