

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this 6th day of July 2020 (“Effective Date”) by and between Secaucus Health Care Center LLC d/b/a Alaris Health at The Fountains d/b/a The Manor and the owner, Avery Eisenreich (hereinafter collectively referred to as “The Fountains”), represented by Michael Heinemann, Esq. of the law firm of Michael Heinemann, PC, and the STATE OF NEW JERSEY, OFFICE OF THE STATE COMPTROLLER, MEDICAID FRAUD DIVISION (“MFD”). The Fountains and MFD are hereinafter collectively referred to as the "Parties" and each individually as a “Party.”

WHEREAS, MFD, through its Recovery Audit Contractor HMS, determined, pursuant to an HMS Long Term Care Payment audit, that The Fountains improperly received Fee-For-Service and Medicaid managed care patient liability and claim overpayments between July 1, 2013 and October 31, 2015 to which The Fountains was not entitled (“Covered Conduct”); and

WHEREAS, MFD determined that, based on the Covered Conduct, The Fountains received an overpayment from the Medicaid program; and

WHEREAS, MFD issued a Notice of Claim, Notice of Withhold and Certificate of Debt against The Fountains; and

WHEREAS, a portion of funds that otherwise would have been payable to The Fountains have been held as part of the withhold (“Withheld Funds”); and

WHEREAS, the parties desire to amicably resolve the dispute regarding the Covered Conduct and have reached a mutually acceptable resolution of the controversies that exist between them;

NOW THEREFORE, in consideration of the mutual promises contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to settle their dispute on the following terms:

(1) The Fountains agrees to pay the total sum of Eighteen Thousand Four Hundred Sixty-Four Dollars and Five Cents (\$18,464.05) (“Total Payment Amount”) to MFD as follows: The Fountains agrees to release \$18,464.05 of Withheld Funds to MFD and MFD agrees that this \$18,464.05 of Withheld Funds will be applied in full satisfaction of the Total Payment Amount. The Fountains waives and relinquishes all rights or claims to \$18,464.05 of the Withheld Funds.

(2) Within five (5) days of execution of this Settlement Agreement, MFD shall notify MCOs and DMAHS to take the necessary steps as soon as practicable to terminate the withholding of otherwise payable funds. The parties understand that the Withheld Funds cannot be determined until MFD has completed an accounting of such funds. MFD shall make all reasonable efforts to provide to The Fountains with an accounting of Withheld Funds no later than ninety (90) days after the effective date of this Settlement Agreement. Given the current challenges brought about by COVID 19, the accounting may take longer than ninety (90) days, but will be provided as soon as practicable.

(3) MFD agrees to remit payment to The Fountains for the amount of Withheld Funds minus the Total Payment Amount within 30 days of an accounting of the Withheld Funds by MFD. In the event that DMAHS and/or the MCOs collectively have withheld less than the Total Payment Amount (\$18,464.05), The Fountains agrees to repay such shortage (i.e. the difference between the Total Payment Amount (\$18,464.05) and the Withheld Funds) to MFD within thirty (30) days of receipt of the accounting of Withheld Funds.

(4) Nothing in this Settlement Agreement precludes The Fountains from disputing the amount of the Withheld Funds by any means permitted by law.

(6) Within seven business days of receipt of the final payment from The Fountains, MFD shall file a Warrant to Discharge with the Clerk of the Superior Court of New Jersey indicating that the Certificate of Debt filed against The Fountains is satisfied and should be removed from the Court's docketed list of judgments. Due to the current COVID 19 challenges, including court closings, the steps outlined in this paragraph may take more time than usual to complete.

(7) If the payment arrangement as provided for in this Settlement Agreement is more than ten (10) days late, The Fountains will be in default of this Settlement Agreement and the total outstanding and unpaid balance, plus interest, will immediately become due and collected through any means available to MFD as provided by law. Should The Fountains fail to cure the default within five (5) days of receiving notice of the default, the default amount will be immediately collected through any means available to MFD, as provided by law.

(8) The Fountains agrees to act in full compliance with all applicable state and federal rules and regulations, including but not limited to submitting only claims that accurately and completely reflect the services provided and medications dispensed by The Fountains. To that end, The Fountains agrees that it will only submit claims for services provided and medications dispensed for which it possesses sufficient documentation to support such claims and that it will implement policies to ensure that the underlying issues that caused or contributed to the Covered Conduct will be appropriately addressed and thereby not repeated.

(9) The parties agree that this Settlement Agreement is intended to be a final resolution of all issues arising out of the Covered Conduct and is intended by each party to release the other party and its representatives from liability arising out of the Covered Conduct unless MFD is

mandated to act by federal or State law; or mandated by order or judgment of a court or administrative agency (other than MFD).

(10) Nothing in this Settlement Agreement waives the rights of any other State or federal agency, including, among others, the New Jersey Division of Criminal Justice, from continuing with a pending or beginning a future civil, administrative or criminal investigation or other action for alleged conduct concerning The Fountains or from taking any action for such conduct. Nothing in this Settlement Agreement waives the rights of MFD to conduct an audit or investigation relating to any matter outside the Covered Conduct, and to take any action civilly or criminally for such conduct.

(11) The terms of this Settlement Agreement may be modified only by a subsequent written agreement signed by all Parties.

(12) Subject to the express terms of this Settlement Agreement as provided for in paragraphs 1-11 above, by the signatures set forth below, the authorization of which is hereby affirmed, The Fountains and MFD agree to the following Release: in consideration of the provision hereof including this release, each party agrees to release the other party and its representatives from liability, obligations and damages arising out of the Covered Conduct.

(13) Nothing herein shall constitute an admission, concession or finding of liability by any party.

(14) This Settlement Agreement shall be construed, enforced and governed by the laws of the State of New Jersey.

(15) This Settlement Agreement may be executed in counterparts.

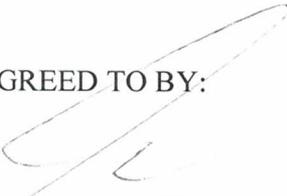
(15) This Settlement Agreement is effective upon the last date it is executed by the parties hereto.

(16) This Settlement Agreement sets forth the entire agreement between and among the parties hereto with respect to the claims described herein and supersedes any other written or oral understandings. This Settlement Agreement does not reflect any other terms or conditions or agreements between or among the parties with respect to any other matter.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto on the following page have executed the foregoing Settlement Agreement:

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

DATE: 7/3/2020

By: 

Avery Eisenreich
Owner of Secaucus Health Care Center LLC
d/b/a Alaris Health at The Fountains
d/b/a Hudson Manor

DATE: 7/3/2020

By: 

Michael Heinemann, Esq.,
Attorney for Secaucus Health Care Center LLC
d/b/a Alaris Health at The Fountains
d/b/a Hudson Manor

KEVIN D. WALSH
ACTING STATE COMPTROLLER

DATE: 7/6/20

By: /s/ Josh Lichtblau
Josh Lichtblau, Director
Medicaid Fraud Division

DATE: 7/6/20

By: /s/ Don Catinello
Don Catinello, Supervising Regulatory Officer
Medicaid Fraud Division

DATE: 7/6/20

By: /s/Justin Berardo
Justin D. Berardo, Regulatory Officer
Medicaid Fraud Division