

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Settlement Agreement") is entered into this 5th day of June, 2019 ("Effective Date") by and between Newark Beth Israel Medical Center, its owners, officers, directors, successors and assigns (hereinafter collectively, "NBIMC") represented by Joseph Shumofsky Esq. of Sills Cummis and Gross, P.C. and the State of New Jersey, Office of the State Comptroller, Medicaid Fraud Division ("MFD"). NBIMC and MFD are hereinafter collectively referred to as the "Parties" and each individually as a "Party."

WHEREAS, MFD conducted an investigation of NBIMC and based upon a review of medical records found that between January 2, 2013 and September 28, 2017, NBIMC was reimbursed by the Division of Medical Assistance and Health Services ("DMAHS") and/or its fiscal agent and/or the Managed Care Organizations for claims for Current Procedural Terminology (CPT) code 93303 and the add-on CPT codes 93320 and 93325, that were not supported by the medical records, in violation of N.J.S.A. 30:4D-12(d), N.J.A.C. 10:49-9.8 and N.J.A.C. 10:54-9.1 (this scope and period is hereafter referred to as "Covered Conduct"); and

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

WHEREAS, NBIMC supplied documentation regarding the discrepant claims along with facts and information that it maintained would help determine the amount of the overpayment that it received (the "Overpayment Amount"); and

WHEREAS, MFD considered the documentation, facts and information that NBIMC shared and determined the Overpayment Amount to be \$2,896,207.00; and

WHEREAS, NBIMC contends that its receipt of the Overpayment Amount was inadvertent and desires to pay back the Overpayment Amount; and

WHEREAS, the parties desire to amicably resolve all issues or disputes regarding the Covered Conduct and the Overpayment Amount and have reached a mutually acceptable resolution;

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 the following terms:

(1) NBIMC agrees to pay to MFD the total Overpayment Amount of \$2,896,207.00 in one lump-sum payment, on or before June 15, 2019.

(2) The Overpayment Amount shall be paid to MFD by certified check, bank check, or attorney trust check made payable to "Treasurer, State of New Jersey," and shall be mailed or delivered as follows:

Attention: Processing Bureau
Treasurer, State of New Jersey
Division of Revenue
200 Woolverton Street, Building 20
Lockbox 656
Trenton, New Jersey 08646

"NBIMC- MFD-2016-00485" must be included in the memo line so that payment is properly credited.

(3) If payment as provided for in this Settlement Agreement is not received by June 30, 2019, MFD shall provide notice to NBIMC by email or telephone to its counsel, as listed below. If, within three (3) business days of NBIMC's receipt of that notice, payment as provided for in this Settlement Agreement is then not received by MFD, NBIMC will be in default of this Settlement Agreement and the outstanding and unpaid balance, plus interest, accruing from the

date of default will immediately become due and collected through any means available to MFD, as provided by law.

(4) NBIMC 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 by NBIMC. To that end, NBIMC agrees that it will only submit claims for services provided for which it possesses sufficient documentation to support such claims and will implement policies to ensure that the underlying issues that caused or contributed to the Covered Conduct will be appropriately addressed.

(5) 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).

(6) 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 NBIMC or from taking any action for such conduct. Nothing in this Settlement Agreement waives the rights of MFD to conduct an audit or investigation of prior or future years for the improper submission of any claims or conduct not specifically covered by this Settlement Agreement, and to take any action civilly or criminally for such conduct.

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

(8) Subject to the express terms of this Settlement Agreement, by the signatures set forth below, the authorization of which is hereby affirmed, NBIMC 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 past or present employees, representatives, officers, directors, agents, successors, assigns or affiliates from liability, obligations and damages arising out of the Covered Conduct.

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

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

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

(12) This Settlement Agreement is effective upon the Effective Date reflected on the first page of the Settlement Agreement.

(13) 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 understanding. 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:

6/4/19

NEWARK BETH ISRAEL MEDICAL CENTER

By:

Name:

Douglas Zehner, Chief Operating Officer

Newark Beth Israel Medical Center

Inc.

DATE:

6/4/19

By:

Joseph B. Shumofsky, Esq.

Sills Cummis & Gross P.C.

One Riverfront Plaza

Newark, New Jersey 07102

(973) 643-5382

jshumofsky@sillscummis.com

Attorney for Newark Beth Israel Medical Center

PHILIP JAMES DEGNAN
STATE COMPTROLLER

DATE:

6/5/19

By:

Josh Lichtblau, Director
Medicaid Fraud Division

DATE:

6/5/19

By:

Don Catinello, Supervising Regulatory Officer
Medicaid Fraud Division

DATE:

6/5/19

By:

Jillian Holmes, Regulatory Officer
Medicaid Fraud Division