

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this \_\_\_\_\_ day of July, 2018 (“Effective Date”) by and between Family Senior Health, LLC, d/b/a SENIOR SPIRIT OF JERSEY CITY, and its owners, officers, directors, successors, and assigns (hereinafter collectively referred to as “Senior Spirit”) and the STATE OF NEW JERSEY, OFFICE OF THE STATE COMPTROLLER, MEDICAID FRAUD DIVISION (“MFD”). Senior Spirit and MFD are hereinafter collectively referred to as the "Parties" and each individually as a “Party.”

WHEREAS, MFD conducted an investigation and found that between July 1, 2011 and June 30, 2014, Senior Spirit 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 in excess of the maximum daily limit of 200 Medicaid beneficiaries per day, contrary to the 2010 to 2014 Appropriations Acts, N.J.S.A. 30:4D-7, and N.J.A.C. 10:49-5.5(a)(17) (“Covered Conduct”); and

WHEREAS, Senior Spirit disputes MFD’s determination and denies any civil wrongdoing in connection with the Covered Conduct; and

WHEREAS, MFD determined that, based on the Covered Conduct, Senior Spirit received overpayments from the Medicaid program totaling \$298,952.79; and

WHEREAS, the parties desire to amicably resolve any and all disputes between them giving rise to the Covered Conduct and have reached a mutually acceptable resolution of the controversies that exist between them; and

WHEREAS, in 2018, MFD instituted a partial withholding of Medicaid reimbursement against Senior Spirit, to be held in a pend file (the “withheld funds”);

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) Senior Spirit agrees to pay to MFD the sum of Two Hundred Ninety Eight Thousand Nine Hundred Fifty-Two Dollars and Seventy Nine Cents (\$298,952.79) within six months of the execution of this Settlement Agreement (the “Total Payment Amount”). The payments are to be made by way of twelve (12) bi-monthly payments over a period of six (6) months, in the amount of \$24,912.73, on or before the 1st and 15<sup>th</sup> business day of each month, starting August 1, 2018, as follows:

- i. August 1, 2018;
- ii. August 15, 2018;
- iii. September 1, 2018;
- iv. September 17, 2018;
- v. October 1, 2018;
- vi. October 15, 2018;
- vii. November 1, 2018;
- viii. November 15, 2018;
- ix. December 3, 2018;
- x. December 17, 2018;
- xi. January 2, 2019; and
- xii. January 15, 2019.

Upon execution of this Settlement Agreement, MFD shall notify each Medicaid Managed Care Organization (“MCO”) to take the necessary steps to lift the withhold of funds within seven (7) business days.

(2) Senior Spirit agrees to allow MFD to obtain the withheld funds as part of the settlement of this matter and MFD agrees that the withheld funds will be applied toward the Total Payment Amount as soon as such funds are determined by MFD. Payments by Senior Spirit shall continue as set forth in paragraph (1). Once the withheld funds have been adjudicated, MFD agrees to provide Senior Spirit with an amended payment schedule that will reflect adjustments made to the last one or more payments that result from the application of the adjudicated withheld funds.

(3) Payment shall be 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

"Senior Spirit" and "██████████" must be included in the memo line so that payment is properly credited.

(4) If the payment arrangement as provided for in this Settlement Agreement is more than ten (10) days late, Senior Spirit will be in default of this Settlement Agreement and the outstanding and unpaid balance will immediately become due and collected through any means available to MFD as provided by law.

(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 Senior Spirit 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) Subject to the express terms of this Settlement Agreement as provided for in paragraphs 1-6 above, by the signatures set forth below, the authorization of which is hereby affirmed, Senior Spirit 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.

(8) Upon verification of payment of the full amount, \$298,952.79, MFD shall file a warrant to satisfy judgment removing the Certificate of Debt against Family Senior Health, LLC, d/b/a Senior Spirit of Jersey City, Frank Cretella and Ilya Nabutovsky with the Superior Court of New Jersey within seven (7) business days.

(9) Nothing herein shall constitute an admission, concession or finding of liability 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.

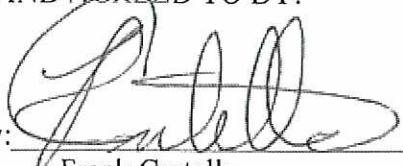
(12) This Settlement Agreement is effective upon the last date it is executed by the parties hereto.

(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 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.

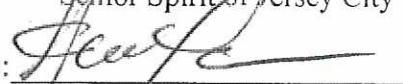
IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed the foregoing Settlement Agreement:

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

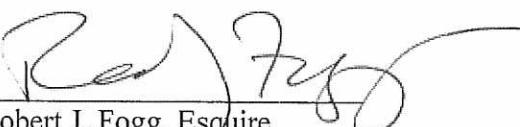
DATE: 7/23/18

By:   
Frank Cretella  
Senior Spirit of Jersey City

DATE: 7/30/18

By:   
Ilya Nabutovsky  
Senior Spirit of Jersey City

DATE: 7/31/18

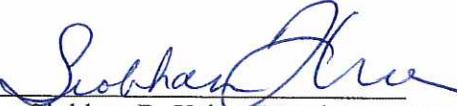
By:   
Robert J. Fogg, Esquire  
Archer & Greiner, P.C.  
Counsel for Senior Spirit of Jersey City

PHILIP JAMES DEGNAN  
STATE COMPTROLLER

DATE: 7/31/18

By:   
Josh Lichtblau, Director  
Medicaid Fraud Division

DATE: 7/31/18

By:   
Siobhan B. Krier, Regulatory Officer  
Medicaid Fraud Division