

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the Department of Health and Human Services ("OIG-HHS") (collectively the "United States"), Friendly Home Care, Inc. ("Friendly") and Deborah Yannicelli ("Yannicelli" or "Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Friendly, a New York corporation, is a Licensed Home Care Services Agency ("LHCSA") as defined in Article 36 of the New York Public Health Law, Section 3602(13), with its principal place of business located at 1811 Kings Highway, Brooklyn, New York.

B. On November 5, 2007, Yannicelli, an individual resident of the State of New York, filed a *qui tam* action in the United States District Court for the Eastern District of New York captioned *United States and State of New York ex rel. Jane Doe v. Extended Nursing Personnel CHHA, LLC, et al.*, Civil Action No. CV-07-4621, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action").

C. As part of its business, Friendly, a LHCSA, entered into contracts to provide home health aides to Certified Home Health Agencies ("CHHAs"), as defined in Article 36 of the New York Public Health Law, Section 3602(3).

D. From at least January 1, 2006 through December 31, 2008, Friendly provided home health aides to several CHHAs.

E. Each CHHA that contracted with Friendly to provide it with home health aides assigned each aide to work with one or more New York Medicaid and/or Medicare beneficiaries

or other CHHA clients. CHHAs, in turn, billed Medicaid for the aides' services.

F. Friendly was also required by the terms of its contracts with CHHAs to which it supplied home health aides to ensure that those aides met all training and qualification requirements of the New York Medicaid and Medicare programs.

G. The United States alleges that Friendly submitted or caused to be submitted claims for payment for home health aide services to the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5 ("the Medicaid Program").

H. The United States contends that it has certain civil claims, as specified in Paragraph 3 below, against Friendly for engaging in the following conduct during the period from January 1, 2006 through December 31, 2008 ("Covered Conduct"):

Friendly knowingly caused CHHAs to submit claims to New York Medicaid, for which the CHHAs received payment and from which funds the CHHAs paid Friendly, for home health aide services provided by individuals who had not received the required training or valid certification.

I. This Agreement is neither an admission of liability by Friendly nor a concession by the United States that its claims are not well founded.

J. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

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

TERMS AND CONDITIONS

1. Friendly shall pay to the United States Three Hundred Forty Thousand Dollars \$340,000 ("Settlement Amount") plus interest on the Settlement Amount at a rate of 1.5 % from

May 18, 2012 through the date that Friendly executes this Agreement. Payment will be made by electronic funds transfer pursuant to instructions to be provided by the Office of the United States Attorney for the Eastern District of New York, within five (5) business days from the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Friendly's full payment of the Settlement Amount, the United States releases Friendly 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.

3. Subject to the exceptions in Paragraph 5 below, and conditioned upon Friendly's full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Friendly from any civil monetary claim Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Friendly and/or its officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

5. Notwithstanding the releases given in Paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- i. Any liability of individuals.

6. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). In connection with this Agreement and this Civil Action, Relator and her heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relator from sharing in the proceeds of this Agreement. Moreover, the United States and Relator and her heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of her claim(s), and that no agreements concerning Relator share have been reached to date, other than the allocation of the Settlement Amount, which was reached by separate

agreement between the United States and Relator.

7. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Friendly, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, with the exception of claims under 31 U.S.C. § 3730(d) for expenses or attorney's fees or costs.

8. Friendly waives and shall not assert any defenses Friendly 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 Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. Friendly fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Friendly has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. 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 carrier or intermediary or any state payer, related to the Covered Conduct; and Friendly agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

11. Friendly 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 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Friendly, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Friendly's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Friendly makes to the United States pursuant to this Agreement and any payments that Friendly may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP") (hereinafter referred to as "Unallowable Costs"); and, if applicable

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Friendly, and Friendly shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States 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 Friendly or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Friendly 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 (as defined in this Paragraph) included in payments previously sought from the United States, 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 Friendly or any of its 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. Friendly agrees that the United States, at a minimum, shall be entitled to recoup from Friendly 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 United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Friendly or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Friendly or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the

United States to audit, examine, or re-examine Friendly's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. 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, including without limitation CHHAs, except to the extent provided for in Paragraph 13 (waiver for beneficiaries paragraph), below.

13. Friendly agrees that it waives and 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. Upon receipt of the payment described in Paragraph 1, above, and upon any resolution of claims by Relator against Friendly pursuant to the FCA for Relator's expenses, attorney's fees, and costs, the Parties shall promptly sign and file a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

15. Friendly and the United States shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

17. 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 New York. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties. This

Agreement may not be amended except by written consent of the Parties.

19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on Friendly's successors, transferees, heirs, and assigns.

22. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

23. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

LORETTA E. LYNCH
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

DATED: 11/19/12

BY:

Kelly Horan Florio
Assistant U.S. Attorney Kelly Horan Florio


DATED: 11/7/12

BY:

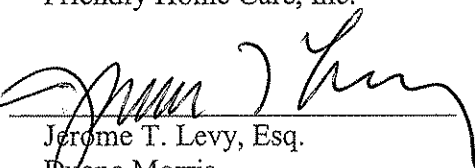
Robert K. Delonti /for
GREGORY E. DEMSKE
Chief Counsel to the Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

FRIENDLY - DEFENDANT

DATED: 11/12/12

BY: 
Owner ~~President~~
Friendly Home Care, Inc.

DATED: 11/12/12


BY: 
Jerome T. Levy, Esq.
Duane Morris
Counsel for Friendly Home Care, Inc.
1540 Broadway
New York, New York 10036-4086
(212) 692-1013

Deborah Yannicelli - RELATOR

DATED: 10/16/12

BY: 
Deborah Yannicelli

DATED: 10/16/12

BY: 
Timothy McInnis, Esq.
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DATED: _____

BY: _____
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Deborah Yannicelli - RELATOR

DATED: _____

BY: _____
Deborah Yannicelli

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BY: _____
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DATED: 10-17-12

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