

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement” or “State Settlement Agreement”) is entered into between the State of Connecticut (“the State”) and Pediatric Services of America, Inc. a Delaware Corporation; Pediatric Services of America, Inc. a Georgia Corporation; Pediatric Healthcare, Inc.; Pediatric Home Nursing Services (collectively “Pediatric Services of America”), hereinafter collectively referred to as “the Parties.”

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. At all relevant times, Pediatric Services of America, a Delaware corporation with its principal place of business in Georgia, marketed and provided nursing and caregiver home care services for medically fragile children and adults in the United States.

B. On May, 24, 2013, Relator Sheila McCray ("Relator") filed a *qui tam* action in the United States District Court for the Southern District of Georgia, Savannah Division captioned *United States of America et al., ex. rel Sheila McCray v. Pediatric Services of America, Inc., Pediatric Services of America, Pediatric Healthcare, Inc., Pediatric Home Nursing Services, collectively d/b/a PSA Healthcare and Portfolio Logic, LLC*, Civil Action No. CV413-127. On December 11, 2013, Relator filed a First

Amended Complaint in the instant action. This *qui tam* action will be referred to collectively as the “Civil Action.”

C. Pediatric Services of America has entered into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the United States of America (as that term is defined in the Federal Settlement Agreement) hereinafter referred to as the “United States.”

D. The State contends that Pediatric Services of America caused claims for payment to be submitted to the State’s Medicaid Program (see 42 U.S.C. §§ 1396-1396(v)).

E. The State contends that it has certain civil and administrative causes of action against Pediatric Services of America for engaging in the following conduct (the “Covered Conduct”):

- Pediatric Services of America knowingly failed to return overpayments that it received from the state Medicaid programs of Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Massachusetts, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia and Washington on claims submitted by PSA to the state Medicaid programs between January 1, 2007 and June 30, 2013;
- Between January 1, 2008 and October 31, 2014, PSA’s locations in California, Colorado, Connecticut, Florida, Georgia, Louisiana, North Carolina, New York, Pennsylvania, South Carolina, Texas and Virginia knowingly submitted claims to those states’ Medicaid programs for services that overstated the length of time that the services were rendered due to the fact that PSA’s payroll and billing systems double rounded minutes worked between 23 and 30 minutes.

F. This Agreement is neither an admission of facts or liability by Pediatric Services of America, nor a concession by the State that its allegations are not well founded. Pediatric Services of America expressly denies the allegations of the State as set forth herein and in the Civil Action.

G. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Pediatric Services of America agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of \$2,773,007.43, plus accrued interest on that amount of 1.625% per annum commencing on February 5, 2015 and continuing and including the day payment is made under this Agreement (collectively, the “Settlement Amount”). The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of the Federal Settlement Agreement, and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) Pediatric Services of America shall pay to the United States the sum of \$1,709,493.66, plus accrued interest on that amount at the rate of 1.625% per annum commencing on February 5, 2015, (“Federal Settlement Amount”). The Federal

Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) Pediatric Services of America shall pay to the Medicaid Participating States the sum of \$1,063,513.77, plus accrued interest (“Medicaid State Settlement Amount”), subject to the non-participating state deduction provision of Sub-paragraph (d) below (“Medicaid Participating State Settlement Amount”), no later than seven (7) business days after the expiration of the **60 day** opt-in period for Medicaid Participating States described in Sub-paragraph (c) below and receipt of written instructions from the State Team. The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General’s National Global Settlement Account pursuant to written instructions from the State Negotiating Team (“State Team”), which written instructions shall be delivered to counsel for Pediatric Services of America.

(c) Pediatric Services of America shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Pediatric Services of America and the State Team have agreed, or in a form otherwise agreed to by Pediatric Services of America and an individual State. The State shall constitute a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to Pediatric Services of America’s attorneys within **60 days** of receiving this Agreement. If this condition is not satisfied within **60 days**, Pediatric Services of America’s offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for Pediatric Services of America and the State Team to extend the **60 day** period.

(d) The total portion of the amount paid by Pediatric Services of America in settlement for the Covered Conduct for the State is \$264,689.58 consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$153,998.08, plus applicable interest (the “State Amount”). If the State does not execute this Agreement within 60 days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Pediatric Services of America absent written agreement between counsel for Pediatric Services of America and the State Team to extend the time period for executing this Agreement.

2. The State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Pediatric Services of America in State or Federal Courts for the Covered Conduct including any supplemental state law claims asserted in the Civil Action and to file any necessary dismissal pleadings.

Contingent upon the receipt of their respective Medicaid Participating State Settlement Amounts, the States, if served with the Civil Action and liable to pay a Relator’s share, agrees to pay the Relator(s) the amount of \$22,909.48, plus applicable interest. This amount is to be paid through the State Team and has been addressed via side letter(s) with the Relator(s) in the Civil Action(s).

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Pediatric Services of America set forth in this Agreement, and conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount as required under Section III, Paragraph 1(b) of this Agreement, the State agrees to release

Pediatric Services of America, its predecessors and current and former parents, divisions, subsidiaries, affiliates, successors, transferees, heirs, and assigns, and their current and former directors, officers, and employees, individually and collectively (collectively, the “Pediatric Services of America Released Entities”), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program as a result of the Covered Conduct.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

(a) any criminal, civil, or administrative liability arising under state revenue codes;

(b) any criminal liability not specifically released by this Agreement;

(c) any civil or administrative liability that any person or entity, including any Pediatric Services of America Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

(d) any liability to the State for any conduct other than the Covered Conduct;

(e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State’s Medicaid program on a capitated basis;

(f) any liability based upon obligations created by this Agreement;

(g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

(h) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Pediatric Services of America;

(i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or

(j) any liability based on a failure to deliver goods or services due.

5. Notwithstanding the provisions sets forth in Paragraph 4(g) and except as reserved in Paragraphs 4(a) and (c) above, in consideration of the obligations of Pediatric Services of America sets forth in this Agreement, and the Corporate Integrity Agreement ("CIA") that Pediatric Services of America has entered into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned on receipt by the State of its share of the State Medicaid Settlement Amount as required under Section III, Paragraph 1(b) of this Agreement, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against Pediatric Services of America for the Covered Conduct. Provided, however, nothing in this Agreement precludes the State from taking action against Pediatric Services of America in the event that Pediatric Services of America is excluded by the federal government, or for conduct and practices other than the Covered Conduct.

6. Pediatric Services of America waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct,

which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. In consideration of the obligations of the State set forth in this Agreement, the Pediatric Services of America Released Entities waive(s) and discharge(s) the State, its agencies, employees, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Pediatric Services of America Released Entities have against the State, its agencies, employees, and agents arising from the State's investigation and prosecution of the Covered Conduct.

8. The amount that Pediatric Services of America must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and Pediatric Services of America agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees to use its best efforts to withdraw the appeal of or not to appeal or cause the appeal of any such denials of claims.

9. Pediatric Services of America shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

10. Pediatric Services of America expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount and compliance with this Agreement.

11. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. Pediatric Services of America agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement. Upon reasonable notice, Pediatric Services of America shall facilitate, and agrees not to impair, the cooperation of its directors, officers, employees or agents, for interviews and testimony, consistent with the rights and privileges of such individuals and of Pediatric Services of America. Upon request, Pediatric Services of America agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. Pediatric Services of America shall be responsible for all costs it may incur in complying with this paragraph.

13. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

15. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

16. In addition to all other payments and responsibilities under this Agreement, Pediatric Services of America agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. Pediatric Services of America will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

17. This Agreement is governed by the laws of the State, except disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

18. The undersigned Pediatric Services of America signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

19. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

20. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

21. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

FOR THE STATE OF CONNECTICUT

State of Connecticut

**State of Connecticut
Division of Criminal Justice
Medicaid Fraud Control Unit**

**State of Connecticut
Department of Social Services
[Connecticut Medicaid Agency]**

By _____
George Jepsen
Attorney General
By Robert B. Teitelman
Assistant Attorney General

By _____
Kevin T. Kane
Chief State's Attorney
By Christopher T. Godialis
Supv. Asst. State's Attorney
Director, CT MFCU

By _____
Roderick L. Bremby
Commissioner

Date: _____

Date: _____

Date: _____

Pediatric Services of America

By: _____ Dated: _____

Eric Minkove
Chief Executive Officer

By: _____ Dated: _____

Rebekah Plowman, Esq.
Counsel to Pediatric Services of America