

## 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 (OIG-HHS) of the Department of Health and Human Services (HHS), (the “United States”), the State of Connecticut, acting through the Attorney General of the State of Connecticut (collectively the “State of Connecticut”), and Family Care Visiting Nurse and Home Care Agency, LLC (“FCVNA”), David A. Krett (“David Krett”) and Rita C. Krett, R.N., B.S.N. (“Rita Krett”), acting through their authorized representatives. All of the foregoing persons or entities are hereafter collectively referred to as “the Parties.”

### RECITALS

A. FCVNA is licensed as a home health agency in the State of Connecticut. FCVNA has offices in Stratford, Woodbridge, Norwalk and Meriden, Connecticut, and provides home health services in Fairfield, New Haven, Hartford and Middlesex Counties. FCVNA is enrolled as a provider in the Medicare Program and the Connecticut Medical Assistance Program (“CMAP”), which includes the State of Connecticut’s Medicaid program. David Krett is an owner, member, and the Chief Financial Officer of FCVNA. Rita Krett is an owner, the managing member, the Administrator, and the Chief Executive Officer of FCVNA.

B. The United States and the State of Connecticut contend that FCVNA, David Krett and Rita Krett submitted or caused to be submitted claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

C. The United States and the State of Connecticut contend that, for the time period from January 1, 2009 up to and through April 30, 2016, FCVNA, David Krett, and Rita Krett:

(1) submitted or caused to be submitted claims to the State of Connecticut Department of Social Services and/or the Connecticut Medical Assistance Program, which includes the

Connecticut Medicaid Program and any fiscal intermediaries, contractors, or agents thereof (collectively referred to herein as “CMAP”), under Healthcare Common Procedure Coding System (“HCPCS”) Code S9123 (services rendered by a registered nurse), when they knew or should have known that a registered nurse did not provide, or did not timely provide, those services and/or that the documentation or provision of those services did not meet Medicaid requirements, including but not limited to requirements referenced in provider agreements and applicable Audit Protocols issued or followed by the Connecticut Department of Social Services, applicable state and federal statutes, standards, rules, and regulations; and

(2) submitted or caused to be submitted claims to Medicaid for patients who were or may have been dually eligible for Medicare and Medicaid, even though applicable state and/or federal requirements for the submission of claims for dually eligible patients had not been met, including but not limited to one or more requirements audited in connection with the Connecticut Department of Social Services Home Health Medicare Maximization Program: (a) submit Medicare claims and/or Requests for Anticipated Payment necessary for Medicare to make coverage determinations; (b) notify the Medicare Maximization Contractor that FCVNA received an Additional Development Request from Medicare; (c) submit timely to the Medicare Maximization Contractor a copy of a Medicare claim status payment and/or denial notice; (d) issue an Advanced Beneficiary Notice (“ABN”); (e) deliver an ABN in a timely fashion; (f) deliver an ABN to a capable recipient; (g) deliver an ABN that informs the beneficiary that the services will not be covered by Medicare; (h) deliver an ABN that informs the beneficiary that they can appeal the notice and properly informs the beneficiary how to do so; and (i) submit to the Medicare Maximization Contractor medical documentation necessary for Medicare to make a coverage determination.

The conduct alleged in Paragraphs C(1) and C(2) of these Recitals is referred to below as the “Covered Conduct.”

D. This Agreement is neither an admission of liability by FCVNA, David Krett or Rita Krett nor a concession by the United States or the State of Connecticut that their claims are not well founded.

E. FCVNA, David Krett, and Rita Krett deny the United States’ and the State of Connecticut’s allegations set forth in Paragraph C (the “Covered Conduct”), above.

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. The amount owed, jointly and severally by FCVNA, David Krett and Rita Krett to the United States and the State of Connecticut is Five Million, Two Hundred Fifty-Three Thousand, Nine Hundred Eight Dollars and Fifty-Four Cents (\$5,253,908.54) (“Settlement Amount”). FCVNA, David Krett and Rita Krett agree that the Settlement Amount will be satisfied as follows:

a. FCVNA, David Krett and Rita Krett shall pay to the United States and the State of Connecticut Nine Hundred Seventy-Six Thousand Three Hundred Eighty Dollars and Seventy-Four Cents (\$976,380.74), no later than seven days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by The Office of the United States Attorney for the District of Connecticut.

b. As of the Effective Date of this Agreement, FCVNA, David Krett and Rita Krett agree to give up and release all right, title, and interest to all Medicaid funds that have been suspended and/or retained by the State of Connecticut pursuant to 42 C.F.R. Section 455.23, in

the amount of Four Million Two Hundred Seventy-Seven Thousand Five Hundred Twenty-Seven Dollars and Eighty Cents (\$4,277,527.80) (“the Suspended Amounts”). FCVNA, David Krett and Rita Krett agree that the calculation of the Suspended Amounts is accurate and that no further monies are due and owing to FCVNA, David Krett and Rita Krett from the State of Connecticut or from the United States. The State of Connecticut and the United States agree that the above calculation of the Suspended Amounts is accurate. FCVNA, David Krett and Rita Krett agree that the United States and the State of Connecticut shall retain the Suspended Amounts forevermore. FCVNA, David Krett and Rita Krett expressly relinquish any and all rights of any kind that they may have with respect to these funds, including, but not limited to, any and all claims or rights to have an overpayment determined, any and all rights to payment of those funds, and any and all rights to appeal, whether formally or informally and whether administratively or judicially, the right of the United States and/or the State of Connecticut to retain those funds, and any other rights FCVNA, David Krett and Rita Krett may have to challenge the Suspended Amounts in any respect. FCVNA, David Krett and Rita Krett further agree to execute any documents necessary to effectuate the release of FCVNA's, David Krett's and Rita Krett's right, title, and interest in the Suspended Amounts.

2. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon FCVNA's, David Krett's and Rita Krett's full payment of the Settlement Amount, the United States releases FCVNA, David Krett and Rita Krett (including any successors, transferees, heirs and assigns) 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 7 (concerning excluded claims) below, and conditioned upon FCVNA's, David Krett's and Rita Krett's full payment of the Settlement Amount, the State of Connecticut releases FCVNA, David Krett and Rita Krett (including any successors, transferees, heirs and assigns) from any civil claims the State of Connecticut has, or could have asserted for the Covered Conduct under Section 4-274 et seq. of the Connecticut General Statutes (Connecticut False Claims Act) and the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) and conditioned on FCVNA's, David Krett's and Rita Krett's full payment of the Settlement Amount, the State of Connecticut Department of Social Services agrees to release and refrain from conducting any audit of CMAP claims paid to FCVNA pursuant to Connecticut General Statutes § 17b-99 (d) for the period from January 1, 2009 up to and through April 30, 2016, or any audit to determine FCVNA's Provider Liability in connection with the administration by the State of Connecticut Department of Social Services of the Home Health Medicare Maximization Program for Program Year 1 through Program Year 8 for the period from January 1, 2009 up to and through April 30, 2016.

5. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below and conditioned on FCVNA's, David Krett's and Rita Krett's full payment of the Settlement Amount, the State of Connecticut Department of Social Services agrees to release and refrain from imposing any administrative sanctions, including suspension from continued participation as a provider in CMAP, on FCVNA, David Krett and Rita Krett (including any successors, transferees, heirs and assigns), for engaging in the Covered Conduct for the period from January 1, 2009 up to and through April 30, 2016.

6. In consideration of the obligations of FCVNA, David Krett and Rita Krett in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and FCVNA, David Krett and Rita Krett, and conditioned upon FCVNA, David Krett and Rita Krett's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against FCVNA, David Krett and Rita Krett under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 7 (concerning excluded claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude FCVNA, David Krett and Rita Krett from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 7, below.

7. Notwithstanding the release given in paragraphs 2 - 6 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of Connecticut are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any liability arising under the laws and regulations that are administered and enforced by the State of Connecticut Department of Revenue Services;
- c. Any criminal liability;

- d. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- e. Except as explicitly stated in this Agreement, any administrative liability to the State of Connecticut Department of Social Services, including suspension from CMAP for any liability for any conduct other than the Covered Conduct;
- f. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- g. Any liability based upon obligations created by this Agreement; and
- h. Any liability of individuals who are not parties to this Agreement;

8. FCVNA, David Krett and Rita Krett waive and shall not assert any defenses FCVNA, David Krett and Rita Krett 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. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the State of Connecticut concerning the characterization of the Settlement Amount for the purposes of the laws and regulations administered and enforced by the Connecticut Department of Revenue Services.

9. FCVNA, David Krett and Rita Krett fully and finally release the United States, the State of Connecticut, and their respective agencies, officers, agents, employees, and servants,

from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that FCVNA, David Krett and Rita Krett have asserted, could have asserted, or may assert in the future against the United States, the State of Connecticut, their respective agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' and the State of Connecticut's 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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or by the State of Connecticut Department of Social Services and/or CMAP, related to the Covered Conduct; and FCVNA, David Krett and Rita Krett agree not to resubmit to any Medicare contractor or State of Connecticut Department of Social Services and/or CMAP any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

11. FCVNA, David Krett and Rita Krett agree to the following, if applicable:

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-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of FCVNA, David Krett and Rita Krett, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the State of Connecticut's audits and civil investigations of the matters covered by this Agreement;



- (3) FCVNA, David Krett and Rita Krett's investigation, defense, and corrective actions undertaken in response to the United States' and the State of Connecticut's 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;
- (5) the payment FCVNA, David Krett and Rita Krett make to the United States and the State of Connecticut pursuant to this Agreement; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to: (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and (ii) prepare and submit reports to the OIG-HHS,

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). However, nothing in paragraph 11.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to FCVNA, David Krett and Rita Krett.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by FCVNA, David Krett and Rita Krett, and FCVNA, David Krett and Rita Krett 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 FCVNA, David Krett and Rita Krett or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

FCVNA, David Krett and Rita Krett further agree that within 90 days of the Effective Date of this Agreement they 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 FCVNA, David Krett and Rita Krett or any of their 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. FCVNA, David Krett and Rita Krett agree that the United States and the State of Connecticut, at a minimum, shall be entitled to recoup from FCVNA, David Krett and Rita Krett 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 and the State of Connecticut pursuant to the direction of the Department of Justice and/or the affected agencies. The United States and the State of Connecticut reserve their rights to disagree with any calculations submitted by FCVNA, David Krett and Rita Krett or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on FCVNA, David Krett and Rita Krett or any of their 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 FCVNA, David Krett and Rita Krett'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, except to the extent provided for in Paragraph 13 (waiver for beneficiaries paragraph), below.

13. FCVNA, David Krett and Rita Krett agree that they waive 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. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. 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.

16. This Agreement is governed by the laws of the United States and the State of Connecticut. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Connecticut, except that disputes only between the State of Connecticut and FCVNA, David Krett and Rita Krett relating to this Agreement will be resolved in Superior Court for the Judicial District of Hartford. 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.

17. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

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

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

20. This Agreement is binding on FCVNA's successors, transferees, heirs, and assigns.

21. This Agreement is binding on David Krett's and Rita Krett's successors, transferees, heirs, and assigns.


22. All parties consent to the United States' and the State of Connecticut's disclosure of this Agreement, and information about this Agreement, to the public.

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

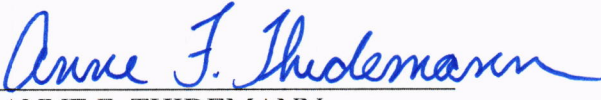
[SIGNATURE BLOCKS ON FOLLOWING PAGES]

THE UNITED STATES OF AMERICA

DATED: 12-13-16

BY:   
JOHN B. HUGHES  
Assistant United States Attorney  
Chief, Civil Division  
District of Connecticut

DATED: 01-05-17

By:   
ANNE F. THIDEMANN  
Assistant United States Attorney  
District of Connecticut

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

JOHN B. HUGHES  
Assistant United States Attorney  
Chief, Civil Division  
District of Connecticut

DATED: \_\_\_\_\_

By: \_\_\_\_\_

ANNE F. THIDEMANN  
Assistant United States Attorney  
District of Connecticut

DATED: 1/3/17

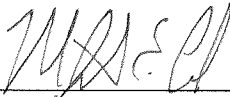
BY: 

LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services


THE STATE OF CONNECTICUT

GEORGE JEPSEN  
ATTORNEY GENERAL


DATED: 1/3/17

BY:   
MICHAEL E. COLE  
Assistant Attorney General  
Chief, Antitrust & Government Program Fraud Department

DATED: 1/3/17

BY:   
KARLA A. TUREKIAN  
Assistant Attorney General

DATED: 1/3/17

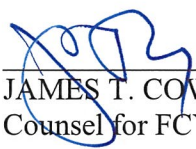
BY:   
ANTONIA C. CONTI  
Assistant Attorney General

**FAMILY CARE VISITING NURSE AND HOMECARE AGENCY, LLC**

DATED: 12/24/16

BY:   
RITA KRETT  
Chief Executive Officer, FCVNA

DATED: 12-28-16

BY:   
JAMES T. COWDERY  
Counsel for FCVNA



**DAVID KRETT & RITA KRETT**

DATED: 12-21-2016.

BY:   
\_\_\_\_\_  
DAVID A. KRETT

DATED: 12/21/16

BY:   
\_\_\_\_\_  
RITA C. KRETT

DATED: 12-28-16

BY:   
\_\_\_\_\_  
JAMES T. COWDERY  
Counsel for David Krett and Rita Krett