

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into between the State of Maryland and Neiswanger Management Services, LLC, NMS Healthcare of Hyattsville, LLC, NMS Healthcare of Hagerstown, LLC, NMS Healthcare of Silver Spring, LLC, NMS Healthcare of Springbrook, LLC, New Annapolis Nursing, LLC, Cleatus Health, LLC, Nancy Moore and Co., LLC, Matthew Neiswanger and Mark Yost, hereinafter collectively referred to as the “Parties.”

RECITALS

A. Prior to February 1, 2018, Neiswanger Management Services, LLC, NMS Healthcare of Hyattsville, LLC, NMS Healthcare of Hagerstown, LLC, NMS Healthcare of Silver Spring, LLC, NMS Healthcare of Springbrook, LLC, and New Annapolis Nursing, LLC (collectively, the “NMS Entities”) managed and/or operated five nursing facilities in Maryland. Matthew Neiswanger is the sole owner of the NMS Entities and, until December 1, 2016, served as their chief executive officer.

B. On December 21, 2016, the State of Maryland (the “State”) filed suit in the Circuit Court for Montgomery County against the NMS Entities, Cleatus Health, LLC, Nancy Moore and Company, LLC, Matthew Neiswanger, and Mark Yost, as well as Craig Neiswanger, Marie Costa Nadora, Belen Policarpio, Santiago Oquendo Toro, and Rene Gomez. The suit is captioned *State of Maryland v. Neiswanger Management Services, LLC, et al.*, Case No. 428607-V, and is referred to herein as “*State v. NMS*.” In *State v. NMS*, the State contends that the Defendants engaged in policies and practices in the discharge of residents from the NMS Entities’ nursing facilities that violated the discharge-related provisions of the Maryland Patient’s Bill of Rights, *see* Md. Code Ann., Health-Gen. §§ 19-342 to 19-353. In addition, the State contends that the NMS Entities and Matthew Neiswanger: (a) in violation of the Maryland False Health Claims Act, *see* Md. Code Ann., Health-Gen. §§ 2-601 to 2-611, submitted claims to the Maryland Medical Assistance program seeking reimbursement for providing social work and discharge planning services that it did not provide; and, (b) in violation of the Maryland False Health Claims Act, submitted claims for reimbursement to the Maryland Medical Assistance program that falsely certified compliance with the discharge-related provisions of the Maryland Patient’s Bill of Rights.

C. On March 17, 2017, the NMS Entities filed suit in the U.S. District Court for the District of Maryland against Patricia T. Nay, Dennis R. Schrader, Mark Paugh and Brian Varacalle, all of whom are employees of the Maryland Department of Health (the “MDH Employees”). The suit is captioned *Neiswanger Management Services, et al. v. Nay, et al.*, Case No. 8:17-cv-00746-PWG and is referred to herein as “*NMS v. Nay*.” In *NMS v. Nay*, the NMS Entities allege that the MDH Employees unlawfully retaliated against the NMS Entities for the exercise of their rights under the United States Constitution.

D. On February 1, 2018, the NMS Entities discontinued their management and operation of nursing facilities in Maryland. In connection with the change of ownership of these

facilities, the NMS Entities have posted, in favor of the Maryland Medical Assistance program, Bond Nos. 800009731, 800009732, 800009733, 800009734, and 800009735 (“the Indemnity Bonds”).

E. This Agreement is neither an admission of liability nor a concession by any of the Parties concerning any of the claims asserted in *State v. NMS* or in *NMS v. Nay*.

F. To avoid the delay, uncertainty, inconvenience and expense of further litigation, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

NOW, THEREFORE, IT IS RESOLVED that, in consideration of the mutual promises and obligations set forth herein, the sufficiency of which is acknowledged, the Parties covenant and agree as follows:

TERMS AND CONDITIONS

1. The effective date of this Agreement is October 24, 2018 (the “Effective Date”).
2. The NMS Entities and Matthew Neiswanger agree that, as of the Effective Date, they shall be permanently precluded from (a) enrolling as providers in the Maryland Medical Assistance program, or (b) maintaining any direct or indirect ownership or control interest in any entity that is enrolled as a provider in the Maryland Medical Assistance program.
3. The NMS Entities and Matthew Neiswanger agree that, as of the Effective Date, they shall be permanently precluded from managing or operating nursing facilities in the State of Maryland or from otherwise engaging, directly or indirectly, in the provision of nursing facility services in the State of Maryland.
4. Matthew Neiswanger agrees that he shall not apply for renewal of his license to practice as a nursing home administrator in the State of Maryland or otherwise seek licensure as a nursing home administrator in the State of Maryland.
5. The NMS Entities and Matthew Neiswanger shall pay to the State \$2.2 million (the “Settlement Amount”) from the Indemnity Bonds. The Parties agree that their execution of this Agreement shall constitute a request for payment by the State to the surety of the Indemnity Bonds (the “Surety”) for payment of the Settlement Amount and an authorization by the NMS Entities for the Surety to pay the Settlement Amount to the State. The NMS Entities will provide a copy of the fully executed Agreement to the Surety within one (1) business day of receiving the State’s executed version of the Agreement. The NMS Entities will notify the State when they have provided the fully executed Agreement to the Surety. The Settlement Amount shall be divided among the bonds as follows: \$299,606.00 from Bond No. 800009734 (NMS Healthcare of Silver Spring, LLC); \$630,220.14 from Bond No. 800009732 (NMS Healthcare of Hyattsville, LLC); \$851,213.19 from Bond No. 800009733 (NMS Healthcare of Hagerstown, LLC); \$198,092.23 from Bond No. 800009735 (NMS Healthcare of Springbrook, LLC); and \$220,868.44 from Bond

No. 800009731 (New Annapolis Nursing, LLC). The NMS Entities and Matthew Neiswanger shall cooperate fully with the State in obtaining payment from the Surety. The Parties acknowledge that the Surety's payment of the above-stated sum from each Indemnity Bond will erode the available penal sum under that Indemnity Bond by the sum paid. The State represents and warrants that it has no pending requests for payment from the Surety as of the Effective Date and agrees to make no new requests for payment from the Surety before it is notified that the NMS Entities have provided a copy of this Agreement to the Surety. In no event shall the NMS Entities or Matthew Neiswanger be liable for any amount that exceeds the original amount of the Indemnity Bonds less any claims made by the State against the Indemnity Bonds.

6. After the State receives notice that the NMS Entities have provided a copy of this Agreement to the Surety, the Maryland Medical Assistance program ("MMA") may make additional requests for payment from the Surety of claims arising from the operations of the NMS Entities prior to February 1, 2018. MMA shall not, however, seek payment from the NMS Entities or Matthew Neiswanger for any such claim in an amount that exceeds the aggregate remaining balance of the Indemnity Bonds, excluding any portion of the Indemnity Bonds that is subject to any separate request for payment by the State, at the time MMA seeks such payment.

7. The Settlement Amount shall be made payable to the "Maryland Office of the Attorney General" and sent to the address below or wired to an account to be designated by the State:

Attn: Director
Medicaid Fraud Control Unit
Office of the Attorney General
200 St. Paul Place, 18th Floor
Baltimore, Maryland 21202

8. Within three (3) business days of payment of the Settlement Amount, (a) the Parties shall file in *State v. NMS*, pursuant to Maryland Rule 2-506, a stipulation dismissing with prejudice the claims asserted by the State against the NMS Entities, Cleatus Health, LLC, Nancy Moore and Co., LLC, Matthew Neiswanger, Mark Yost, Craig Neiswanger, Marie Costa Nadora, Belen Policarpio, Santiago Oquendo Toro, and Rene Gomez,; (b) the NMS Entities and the MDH Employees shall file in *NMS v. Nay*, pursuant to Fed.R.Civ.P. 41, a stipulation dismissing all claims with prejudice; and (c) Matthew Neiswanger shall cause New Generations Dialysis, LLC to dismiss with prejudice its appeal before the Maryland Office of Administrative Hearings docketed as New Generations Dialysis, LLC, OAH Case No. DHMH-MCP-15-17-17088.

9. Conditioned upon the full payment of the Settlement Amount, the State agrees to fully and finally release the NMS Entities, Matthew Neiswanger, and Mark Yost from any civil claim that is known or reasonably could have been known to the State as of the Effective Date that the State has asserted, could have asserted, or may assert in the future under the False Health Claims Act, or under common law theories of payment by mistake, unjust enrichment, fraud or other causes of action to the extent that such claims have been or could have been pursued by the

State pursuant to 42 C.F.R. § 1007.11(a) or 42 C.F.R. § 1007.11(c).

10. Conditioned upon the full payment of the Settlement Amount, the State agrees to fully and finally release Craig Neiswanger, Marie Costa Nadora, Belen Policarpio, Santiago Oquendo Toro, and Rene Gomez from any civil claim arising from the conduct described in *State v. NMS* to the extent that such claims have been or could have been pursued by the State under the False Health Claims Act, or under common law theories of payment by mistake, unjust enrichment, fraud or other causes of action to the extent that such claims have been or could have been pursued by the State pursuant to 42 C.F.R. § 1007.11(a) or 42 C.F.R. § 1007.11(c).

11. The NMS Entities, Matthew Neiswanger, and Mark Yost fully and finally release the State of Maryland, its agencies, officers, agents, employees, and servants, including but not limited to the MDH Employees, from any claims arising on or before the Effective Date of this Agreement (including claims for attorneys' fees, costs, and expenses of every kind and however denominated) (1) that the NMS Entities, Matthew Neiswanger, and Mark Yost have asserted, could have asserted, or may assert in the future under the United States or Maryland Constitutions or the Maryland Declaration of Rights, 42 U.S.C. § 1983, or the common law; (2) that are or could have been raised in *NMS v. Nay*; or (3) related to the State's investigation and prosecution of *State v. NMS*.

12. The claims released pursuant to this Agreement do not include claims to enforce the terms of this Agreement.

13. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by any Party concerning the characterization of the Settlement Amount for purposes of state or federal tax laws.

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. The NMS Entities, Cleatus Health, LLC, Nancy Moore and Co., LLC, and Matthew Neiswanger agree that they waive and shall not seek payment for any of the health care billings which are the subject of this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims released in this Agreement.

16. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. This Agreement constitutes the entire agreement of the Parties. All prior understandings, representations, and agreements are merged in this Agreement and this Agreement shall not be modified in any manner, except in writing signed by all Parties.

18. Each Party and signatory to this Agreement represents and warrants that they are authorized as a result of appropriate corporate action or official authority to execute this Agreement. Each Party and signatory represents that it freely and voluntarily enters into this Agreement.

19. This Agreement is governed by the laws of the State of Maryland. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the Circuit Court for Montgomery County. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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 the Parties' successors, transferees, and assigns.

22. Any Party may disclose this Agreement, and information about this Agreement, to the public.

23. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and Release by their signatures.

The State of Maryland


DATED: _____

BY: _____

Brian E. Frosh
Attorney General

DATED: _____

BY: _____


Frederick Doggett
Inspector General
Maryland Department of Health

18. Each Party and signatory to this Agreement represents and warrants that they are authorized as a result of appropriate corporate action or official authority to execute this Agreement. Each Party and signatory represents that it freely and voluntarily enters into this Agreement.

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The State of Maryland

DATED:

10/24/18

BY:



Brian E. Frosh
Attorney General

DATED: _____

BY: _____

Frederick Doggett
Inspector General
Maryland Department of Health

DATED: _____

BY: _____
Frederick Doggett
Inspector General
Maryland Department of Health

Neiswanger Management Services, LLC

DATE: 10/25/2018

BY: 

Matthew Neiswanger
Owner

NMS Healthcare of Hvattsville, LLC

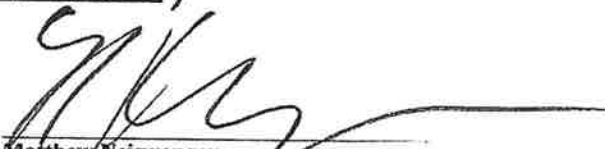
DATE: 10/25/2018

BY: 

Matthew Neiswanger
Owner

NMS Healthcare of Hagerstown, LLC

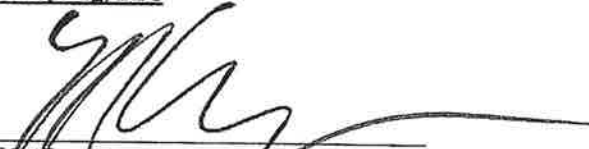
DATE: 10/25/2018

BY: 

Matthew Neiswanger
Owner

NMS Healthcare of Silver Spring, LLC

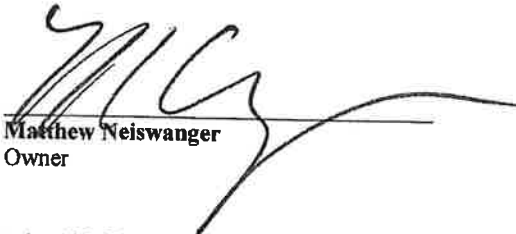
DATE: 10/25/2018

BY: 

Matthew Neiswanger

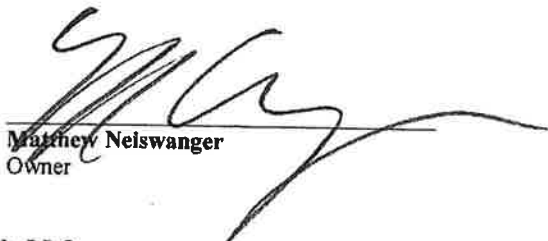
NMS Healthcare of Springbrook, LLC

DATE: 10/25/2018

BY: 
Matthew Neiswanger
Owner

New Annapolis Nursing, LLC

DATE: 10/25/2018

BY: 
Matthew Neiswanger
Owner


Cleatus Health, LLC

DATE: 10/25/2018

BY: 
Matthew Neiswanger
Owner

Nancy Moore and Co, LLC

DATE: 10/25/2018

BY: 
Matthew Neiswanger
Owner

Matthew Neiswanger

DATE: 10/25/2018

BY:

Matthew Neiswanger

A handwritten signature in black ink, appearing to be 'MN', written over a horizontal line. The signature is stylized and extends to the right of the line.

DATE: _____

BY: _____
Matthew Neiswanger
Owner

Cleatus Health, LLC

DATE: _____

BY: _____
Matthew Neiswanger
Owner

Nancy Moore and Co, LLC

DATE: _____

BY: _____
Matthew Neiswanger
Owner


Matthew Neiswanger

DATE: _____

BY: _____
Matthew Neiswanger

Mark Yost

DATE: 10/25/2018

BY: _____

Mark Yost