

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 (the “State of Connecticut”), and Patricia McAlinden, LCSW (“McAlinden”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Patricia McAlinden is a licensed clinical social worker in the State of Connecticut. McAlinden is enrolled as a Licensed Behavioral Health Clinician in Independent Practice in the Connecticut Medical Assistance Program (“CMAP”), which includes Connecticut’s Medicaid program. The CMAP is administered by the State of Connecticut Department of Social Services (“DSS”).

B. The United States and the State of Connecticut contend that McAlinden 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 they have certain civil claims against McAlinden arising from her submission of claims to Medicaid under CPT codes 90837 (Psychotherapy, 60 minutes with patient and/or family member) and 90846 (Family Psychotherapy without the patient present, 50 minutes) for psychotherapy services during the time period January 1, 2016 through September 5, 2017 as if she had rendered the services when in fact an unlicensed individual rendered the services. That conduct is referred to below as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by McAlinden nor a concession by the United States or the State of Connecticut that their claims are not well founded.

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 Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. McAlinden shall pay to the United States and the State of Connecticut One Hundred Forty-Five Thousand, Eight Hundred Fifty-Five Dollars and Forty Cents (\$145,855.40) (“Settlement Amount”), of which Seventy-Two Thousand, Nine Hundred Twenty-Seven Dollars and Seventy Cents (\$72,927.70) is restitution. McAlinden agrees the Settlement Amount will be satisfied as follows:

a. McAlinden hereby agrees that the State of Connecticut shall retain the Medicaid funds that have been suspended and/or retained by the State of Connecticut, in the amount of Twenty-One Thousand, Five Hundred Seventy-Nine Dollars and Eighty-Five Cents (\$21,579.85) (the “Suspended Amounts”) forevermore. McAlinden expressly relinquishes any and all rights of any kind that she may have with respect to the Suspended Amounts, including, but not limited to: any and all claims or rights to have an overpayment determined by the DSS audit process as described in Conn. Gen. Stat. §17b-99, 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 State of Connecticut and/or the United States to retain those funds, and any other rights McAlinden may have to challenge the Withholding or the Suspension of the Suspended Amounts in any respect. McAlinden further agrees to execute any

documents necessary to effectuate the release of her right, title, and interest in the Suspended Amounts.

b. McAlinden hereby agrees to pay to the United States and the State of Connecticut One Hundred Twenty-Four Thousand, Two Hundred Seventy-Five Dollars and Fifty-Five Cents (\$124,275.55) by electronic funds transfer, pursuant to written instructions to be provided by The Office of the United States Attorney for the District of Connecticut, no later than five days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon McAlinden's full payment of the Settlement Amount, the United States releases McAlinden 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. Conditioned upon McAlinden's full payment of the Settlement Amount, subject to the exceptions in Paragraph 4 (concerning excluded claims) below, the State of Connecticut releases McAlinden from any civil claims the State of Connecticut has, or could have asserted for the Covered Conduct under Section 4-275 *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. 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 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. Except as explicitly stated in this Settlement Agreement, any administrative liability to the DSS, including suspension from CMAP;
- c. Any criminal liability;
- d. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- e. Any liability to the United States or the State of Connecticut (or their respective agencies) for any conduct other than the Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;

5. VOLUNTARY SUSPENSION

a. In compromise and settlement of the rights of the DSS to suspend McAlinden pursuant to Regs. Conn. State Agencies §§17-83k-1 through 17-83k-7, based upon the Covered Conduct, McAlinden agrees to enter into a Suspension Agreement with the DSS (attached hereto as Exhibit A), thereby suspending her from providing goods or services to the Connecticut Medicaid program, and all other Connecticut health care programs for a period of three (3) years. The suspension shall be effective upon the execution of the Consent Order by the DSS Commissioner.

b. The Connecticut Medicaid program and all other Connecticut health care programs shall not pay any entity or person for items or services, including administrative and management services, furnished, ordered, or prescribed by McAlinden in any capacity while McAlinden is suspended. This payment prohibition applies to McAlinden and all other individuals and entities (including, for example, anyone who employs or contracts with McAlinden, and any school district or other provider where McAlinden provides services). The suspension applies regardless of who submits the claim or other request for payment. Violation

of the conditions of the suspension may result in criminal prosecution, the imposition of monetary penalties and assessments, and an additional period of suspension. McAlinden further agrees to hold the Medicaid program and all other Connecticut health care programs, and all Medicaid program and all Connecticut health care program beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the suspension. McAlinden waives any further notice of the suspension and agrees not to contest such suspension either administratively or in any state or federal court.

c. Reinstatement to program participation is not automatic. If McAlinden wishes to be reinstated, McAlinden must submit a written request for reinstatement to DSS in accordance with the provisions of Regs. Conn. State Agencies §17-83k-7. Such request may be made to the DSS no earlier than 120 days prior to the expiration of the three (3) year period of suspension. Reinstatement becomes effective upon application by McAlinden, approval of the application by DSS, and notice of reinstatement by DSS. Obtaining another license, moving to another state, or obtaining a provider number from a Medicare contractor, any non-Connecticut state agency, or a Federal health care program does not reinstate McAlinden's eligibility to participate in the Connecticut Medicaid program or any other Connecticut health care programs.

6. McAlinden waives and shall not assert any defenses McAlinden 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.

7. McAlinden fully and finally releases 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 McAlinden has 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' investigation and prosecution thereof.

8. 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 any state payer, related to the Covered Conduct; and McAlinden agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

9. McAlinden 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-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of McAlinden, her 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 audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) McAlinden'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 McAlinden makes to the United States and the State of Connecticut pursuant to this Agreement,

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).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by McAlinden, and McAlinden 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 McAlinden or any of her affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: McAlinden further agrees that within 90 days of the Effective Date of this Agreement she 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 McAlinden or any of her 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. McAlinden agrees that the United States and the State of Connecticut, at a

minimum, shall be entitled to recoup from McAlinden 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 McAlinden or any of her affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on McAlinden or any of her affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States or the State of Connecticut to audit, examine, or re-examine McAlinden's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

10. 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 11 (waiver for beneficiaries paragraph), below.

11. McAlinden agrees that she 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.

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

13. 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.

14. 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 District of Connecticut, except disputes only between the State of Connecticut and McAlinden will be resolved in Superior Court for the Judicial District of Hartford, Connecticut. 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.

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

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

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

18. This Agreement is binding on McAlinden's successors, transferees, heirs, and assigns.

19. 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.

20. 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.

THE UNITED STATES OF AMERICA

DATED: 4-5-19

BY:

John B. Hughes

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

DATED: 4/8/19

BY:

Anne F. Thidemann

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: 4/05/19

BY: Lisa M. Re
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


WILLIAM TONG
ATTORNEY GENERAL

DATED: 4/3/19

BY: 

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

DATED: 4/3/2019

BY: 

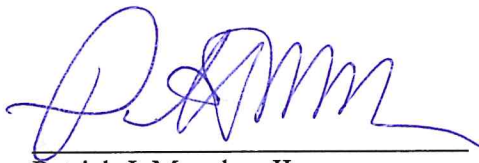
KARLA A. TUREKIAN
Assistant Attorney General

PATRICIA MCALINDEN

DATED: 3/29/19

BY: 
Patricia McAlinden, LCSW

DATED: 3/29/19

BY: 
Patrick J. Monahan II
Counsel for McAlinden