

GENERAL RELEASE AND SETTLEMENT AGREEMENT

I. PARTIES

This General Release and Settlement Agreement (“Agreement”) is entered into by the Medicaid Fraud and Residential Abuse Unit (“MFRAU”) of the Office of the Vermont Attorney General on behalf of itself and the Department of Vermont Health Access (“DVHA”) (collectively, the “State”), and Keene Medical Products, Inc. (“Keene”), (hereinafter the “Parties”), through their authorized representatives.

II. PREAMBLE

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

A. Keene, a New Hampshire corporation, is a durable medical equipment, prosthetics, orthotics and supplies (“DMEPOS”) supplier doing business in the state of Vermont during the time period from 2006 to present.

B. Keene was enrolled as a Vermont Medicaid provider during the time period from 2006 to present, offering DMEPOS. As an enrolled Medicaid provider, pursuant to its executed Provider Enrollment Agreements, Keene agreed to abide by applicable state and federal rules and regulations, including the Medicaid Covered Service Rules and Provider Manual issued by DVHA, governing the submission of claims to the Medicaid program.

C. MFRAU received a referral from DVHA’s Program Integrity Unit alleging that Keene was submitting claims to Medicaid in contravention of Medicaid regulations for oximetry services, sterile water, backup oxygen, hospital beds, and mechanical lifts. MFRAU undertook an investigation of DVHA’s referral which included review of documentary evidence and witness statements.

D. DVHA notified Keene on September 5, 2014, that effective September 15, 2014 it would partially suspend Vermont Medicaid provider payments to Keene, pursuant to 42 C.F.R. § 455.23. The suspension took effect as noticed, and to date an approximate total of \$747,260.86 has been held under the suspension by DVHA.

E. MFRAU's investigation determined that Keene submitted incorrect claims to Medicaid as a result of the following "Covered Conduct."

- a. Keene submitted A4606 claims to Medicaid for oximeter probes to beneficiaries for whom Medicaid was also billed for rental of the oximeter device. Section 11 of the Vermont Medicaid Provider Manual prohibits claims for supplies necessary to the functioning of rental equipment.
- b. Keene submitted A4216 claims to Medicaid for sterile water 10 mL units in quantities in excess of 100 units per claim. The quantities billed exceeded expectations for the amount of units that would be medically necessary, and at times the amount of units reported delivered by beneficiaries.
- c. Keene submitted A4217 claims to Medicaid for sterile water 500 mL units in quantities in excess of 100 units per claim. The quantities billed exceeded expectations for the amount of units that would be medically necessary.
- d. Related to DVHA Case #1707, Keene submitted several claims in duplicate with one claim being filed to Medicare with a cross-over claim to Medicaid using provider ID 1004915 (Keene High-Tech provider number) and then billed the same services, for the same beneficiaries, in a claim for full payment to Medicaid using provider ID 0007038. In the same DVHA case

there were also several claims filed for rental and purchase of the same item.

The alleged overpayment for these items was \$784.53.

- e. Related to DVHA Case # 1967, covering the years from 2009-2012, Keene submitted claims for backup oxygen, E0424, for beneficiaries who were able to access primary oxygen sources. Medicaid does not pay for backup oxygen unless a beneficiary cannot utilize primary oxygen sources on a regular basis.
- f. Related to DVHA Case #1699, Keene submitted claims for hooyer lifts lacking prior authorization after the expiration of the three month initial period which does not require a prior authorization. The alleged overpayment for this item is \$378.72
- g. Related to DVHA Case #2187, Keene submitted claims for wheelchair accessory products which were not to be billed separately per Medicaid rules. The alleged overpayment for this item is \$350.05.

F. The State met with representatives and counsel for Keene on September 1, 2015. During that meeting the State explained that it intended to file a civil complaint alleging that the Covered Conduct described above in subparagraphs E(a) – (b) violates the Vermont False Claims Act (32 V.S.A. § 631), the Vermont Medicaid Fraud Statute (33 V.S.A. § 141(d)), and constitutes a violation of Keene’s obligations under its Provider Enrollment Agreements. The State also alleged that the Covered Conduct described above in subparagraphs E(c) – (g) led to overpayments to Keene that could be administratively recovered. The State represented that if filed, the Complaint sought damages of \$611,042.37 for the time period of January 1, 2006 through July 31, 2015, as well as civil penalties and interest. Subsequent to the September 1, 2015 meeting the State discovered additional billings it alleges resulted from the Covered

Conduct described by subparagraphs E(a) and E(c). The State alleges that these claims resulted in \$6,999.78 in additional damages to the State.

G. Keene does not dispute the facts regarding the Covered Conduct insofar as they are described above in subparagraphs (a)-(g), but denies that Keene violated the Provider Enrollment Agreements, the Vermont False Claims Act (32 V.S.A. § 631), the Vermont Medicaid Fraud Statute (33 V.S.A. § 141(d)), or any other state or federal law.

H. To avoid the delay, expense, inconvenience, and uncertainty of litigation or administrative recoupment proceedings of the above claims and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties reach a full and final settlement of the Covered Conduct pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Keene shall pay to the State of Vermont a total sum of four hundred sixty-one thousand, six hundred and twenty-one dollars and nine cents (**\$461,621.09**) (the "Settlement Amount"). The Settlement Amount shall be made in a single installment at the time that DVHA releases to Keene the monies on adjudicated claims it has been holding in suspension under 42 CFR § 455.23, as described below in paragraph 4, by reducing the monies released by that same amount (\$461,621.09). The Settlement Amount provides for recovery of Medicaid funds to the State of \$451,621.09, and \$10,000.00 in additional recoveries to the State.

2. With regard to future claims for sterile water, Keene will comply with any current and future limits and policies set by Medicaid and will only deliver quantities which are medically necessary.

3. Keene has offered recoupments to DVHA regarding the Covered Conduct. DVHA has not accepted these recoupments because of the understanding that the Settlement Agreement resolves all issues of payment. DVHA will repay any accepted recoupment, if, at any time, the Parties determine that recoupments were accepted by DVHA for the Covered Conduct,

4. Keene fully and finally releases the State, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Keene has asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the Covered Conduct, the State's investigation thereof, and the suspension of Vermont Medicaid provider payments to Keene under 42 CFR § 455.23.

5. Subject to the exceptions in Paragraphs 7 and 8 below, in consideration of the obligations of Keene set forth in this Agreement, and conditioned upon Keene's payment in full of the Settlement Amount and its execution of the Corporate Integrity Agreement described in paragraph 6, the State (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Keene, its predecessors, transferees, successors, current and former divisions, assigns, direct or indirect affiliates, and all current and former directors, officers, employees, representatives, servants, agents, consultants and attorneys, individually or collectively, from any civil, criminal, or administrative claim the State has or may have for the Covered Conduct.

6. DVHA shall instruct HP Enterprise Services ("HP"), the fiscal intermediary for the Vermont Medicaid program, to release all monies that have been held in suspension for

Keene since September 15, 2014, in the earliest possible remittance advice following the effective date of this Agreement. As of the date of this Agreement, suspended payments totaled approximately \$747,260.86. As a result of the deduction for the Settlement Amount, described in Paragraph 1 above, the distribution will be for approximately \$285,639.77 plus any additional claims paid between the date of this settlement and the distribution of funds. DVHA records will indicate payment to Keene in the full amount of payments distributed including the \$461,621.09 Settlement Amount.

7. Concurrent with the execution of this Settlement Agreement, the parties will execute a Corporate Integrity Agreement governing Keene's continued participation in Vermont Medicaid for a term of three years. Execution of the Corporate Integrity Agreement by the parties is a material term to this Settlement Agreement, and a condition to any releases contained herein. However, a breach of the Corporate Integrity Agreement, by itself, does not constitute a breach of this Settlement Agreement.

8. Notwithstanding any terms of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Keene) are any and all of the following:

- (a) Any criminal, civil or administrative liability to the State (or its departments or agencies) for any conduct other than the Covered Conduct. However, any conduct disclosed by the Independent Review Organization or Keene as part of the Retrospective Review, as defined by the CIA, shall only be subject to the liability set forth in the CIA;
- (b) Any liability based upon a breach of such obligations as are created by this Agreement;

- (c) Any liability created by actions taken by Keene following the execution of this agreement, including but not limited to any breach of the Corporate Integrity Agreement.

9. Without limitation of the foregoing, immediately following execution of this Agreement, MFRAU and DVHA shall terminate all current administrative, civil and criminal investigations and proceedings against Keene relating to the Covered Conduct, and will not pursue any further or additional claims or litigation against Keene relating to the same absent a breach of this Agreement.

10. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the Settlement Amount for purposes of state or federal tax laws, and Keene will rely on its own counsel or experts regarding the effect of this Agreement under any state or federal tax laws.

11. Keene shall not resubmit to any Vermont Medicaid carrier or intermediary any previously denied claims or held claims for the Covered Conduct, and shall not appeal any such denials of claims, but may do so for non-Covered Conduct. However, Keene may submit or resubmit claims for A4217 if the claim was for 100 units or less and medically necessary.

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 Paragraphs 4 and 5 above.

13. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Keene represents that this Agreement is freely and voluntarily entered into with the advice of counsel and without any degree of duress or compulsion whatsoever.

15. Subject to Paragraph 7, relating to the Corporate Integrity Agreement, this Agreement constitutes the complete agreement between the Parties. All prior agreements, statements, representations, warranties and promises by either party is hereby merged into this Agreement. This Agreement may not be amended except by written consent of the Parties.

16. Keene represents and warrants that the representative designated below is authorized to execute this Agreement on behalf of Keene and that Keene has not assigned any claims, rights, or liabilities subject to this Agreement to any other party. The undersigned signatories for the State of Vermont represent that they are signing this Agreement in their official capacity and that they are authorized to execute this Agreement.

17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

18. This Agreement is binding on successors, transferees, and assigns.

19. This Agreement is effective on the date of the signature of the last signatory to the Agreement ("Effective Date").

DATED: 2/1/16

BY:

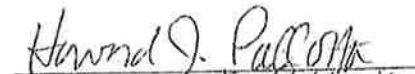
STATE OF VERMONT



Jason M. Turner
Assistant Attorney General


DATED: 2/2/16

BY:


Howard Palotta J. PALLOTTA
General Counsel, DVHA


KEENE MEDICAL PRODUCTS, INC.

DATED: 2/4/16

BY: 
Keith Filiault
Vice President and CFO

ACKNOWLEDGED:

DATED: 2/5/16

BY: 
Joshua Skora, Esq.
Brown & Fortunato, P.C.
Counsel for Keene Medical Products, Inc.