

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between 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")(collectively the "United States"); and AmeriChoice of Pennsylvania, Inc., formerly known as Healthcare Management Alternatives, Inc., collectively referred to throughout this Agreement as "ACPA." ACPA and the United States are hereafter referred to as "the Parties." The Agreement is agreed to and executed by the authorized representatives of the Parties.

II. PREAMBLE

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

A. ACPA is a for-profit corporation located at all relevant times within the Eastern District of Pennsylvania.

B. The United States contends that, from September 1995 through June 1998, ACPA submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, and/or the Medicaid Program ("Medicaid"), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v.

C. The United States alleges violations of the False Claims Act, 31 U.S.C. §§ 3729-3733, by ACPA from September 1995 through June 1998, based on ACPA's handling, processing and/or payment of claims submitted by providers (including its failure to process or pay claims in a timely fashion or at all), ACPA's inaccurate reporting of claims processing data to the Commonwealth of Pennsylvania (including its failure to meet self-reporting requirements and impose self-assessment penalties as required under the managed care contract with the Commonwealth of Pennsylvania) and ACPA's coverage of home health services to qualified beneficiaries (including its failure to do so), hereinafter referred to collectively as the "Covered Conduct."

D. ACPA does not admit the contentions of the United States as set forth in Paragraph C above.

E. In order to avoid the delay, uncertainty,

inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth 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. At the time of execution of this Agreement, ACPA agrees to pay to the United States the sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00) (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office.

2. ACPA agrees to the following claims payment obligations:

Within 120 days after the effective date of this Agreement, ACPA shall develop and implement a comprehensive program whose purpose is to ensure timely processing and appropriate payment of all claims submitted to ACPA by any participating provider. For purposes of the Claims Payment Obligations set forth in this paragraph 2, "claims" shall not include any pharmacy benefit claims. At a minimum, this program shall have the following elements:

A. ACPA shall have a verifiable, auditable system to ensure timely receipt and recording of all claims received by ACPA.

(1) For paper claims, ACPA shall ensure that every claim is entered into its electronic system with a unique identifier number as received within 96 hours after the claim is delivered to its post office box, or delivered to its claims processing center, whichever is earlier. For claims received on a non-working day, the 96-hour period will begin at 8 a.m. on the first working day after the claim is received.

(2) For electronic claims, ACPA shall ensure that every claim that contains valid provider and member identification numbers is entered into its electronic system with a unique identifier number within 24 hours

of receipt by ACPA. For electronic claims with valid provider and member identification numbers received on a non-working day, the 24-hour period will begin at 8 a.m. on the first working day after the claim is received.

(3) ACPA shall maintain an automated query system which will allow participating providers to determine, without charge, the receipt and status of all claims submitted by that provider within the last 120 days, to determine the date and amount of any paid claim paid within the last 120 days, to determine the date and basis of denial of any claim denied within the last 120 days, and to determine the processing status for any claim that, within the last 120 days, was pended or was determined to be unclean. Moreover, ACPA shall maintain a system (that need not be automated) that will allow participating providers to determine, without charge, the reason why any claim submitted within the last 120 days was pended.

(4) ACPA shall maintain a claims data system which is verifiable and auditable, and which is subject to weekly checks to determine that there is full compliance with the requirements of this section.

B. ACPA shall have a verifiable, auditable system to ensure entry of all relevant data into the claims processing system. This system shall ensure timely entry of at least the following data elements:

(1) member identification numbers and eligibility information, including but not limited to Medicaid eligibility information, pre-authorization information, and, to the extent provided to ACPA, secondary payor and/or third-party tortfeasor information and plan membership information;

(2) to the extent available to ACPA, information relating to inconsistent or overlapping claims from other providers, which have the potential to reduce or prevent payment;

(3) information relating to the participating provider (e.g., whether the provider was in fact a participating provider at the time the services were rendered, whether the provider was authorized by the provider

agreement and Plan policies to provide the services for which payment is claimed, whether the patient was included in the physician's group at the time services were rendered) if the member was included in the PCP's group at the time the services were rendered.

C. ACPA shall use reasonable best efforts to make timely payment of valid claims by all providers. Timely payment shall mean payment by either issuance of a check or electronic funds transfer of 95% of clean claims within 30 calendar days of the later of ACPA's receipt of such claim or the date on which ACPA is in receipt of all information needed, including without limitation all documentation reasonably needed by ACPA to determine that such claim does not contain any material defect or error. Compliance with this timeliness requirement shall be measured on a monthly, not daily, basis. This system shall include but not limited to:

the identity of the patient, the date of service, the claim number, the CPT or other procedure code for which each claim is submitted, the CPT or other procedure code for which payment is made, the provider receiving payment, the date of the payment, the amount of the payment, the check number or electronic transfer number, the address or bank to which payment was sent.

D. ACPA shall have a verifiable, auditable system to ensure appropriate handling and resolution of all denied or pending claims by any provider. This system shall include but not be limited to:

(1) providing written or electronic notice to the provider within thirty calendar days of any action by ACPA to deny any claim setting forth the identity of the patient, the date of service, the claim number, the CPT or other procedure for which each such claim was submitted, and the basis upon which payment was denied;

(2) maintaining in writing and making available upon request to the United States and to any affected provider all policies, guidelines, procedures, and rules which result in the denial or pending of any claim;

(3) maintaining the ability to generate monthly reports, available to the United States upon request, of claims not adjudicated within 30 days or less of receipt by ACPA sorted by provider, claim number, and date received;

(4) ensuring that each provider whose claim is denied is given timely notice of his appeal rights; and

(5) maintaining the ability to generate monthly reports, available to the United States upon request, of each denied claim which is the subject of an appeal, sorted by provider, claim number, date appealed, and status/resolution of appeal.

E. ACPA shall have an auditable, verifiable system for assuring that providers whose claims are improperly denied or delayed are made whole by ACPA for the properly payable amount of the claim, together with interest (to the extent required by applicable law).

F. ACPA shall comply with all applicable requirements of federal and state law, and all licensing and contractual requirements relating to receipt, processing, and appeals of provider claims.

G. ACPA agrees to accept both properly completed paper claims submitted on Form CMS-1500, UB-92 or the equivalent, and also electronic claims populated with similar information in HIPAA-complaint format or fields. ACPA may encourage, but shall not require, participating providers to utilize electronic transactions. ACPA shall disclose on its Provider Website its policies and procedures regarding the appropriate format for claims submissions and requests for additional information. ACPA shall file a Certification with the U.S. Department of Justice that describes ACPA's policies and procedures regarding the appropriate format for claims submissions and requests for additional claim information.

H. ACPA shall not automatically reduce the code level of evaluation and management codes billed for covered services. Notwithstanding the foregoing sentence, ACPA shall continue to have the right to deny or adjust such claims for covered services on other bases and shall have the right to reduce the code level for selected claims for covered services (or claims for covered services submitted by selected Physicians or Physician Groups or Physician Organizations) based on a review of the information in the written medical record at the time the service was rendered for particular claims, a review of information derived from ACPA's fraud and abuse detection programs that creates a reasonable belief of fraudulent, abusive or other inappropriate billing practices, or other tools that reasonably identify

inappropriate coding of evaluation and management services; provided that the decision to reduce is based at least in part on a review of the clinical record.

I. ACPA shall develop and implement a plan reasonably designed to permit a Participating Physician or Physician Group that has entered into a written contract directly with ACPA to view, by December 31, 2005, on ACPA's Provider Website, on a confidential basis, the complete fee schedule applicable to such Participating Physician pursuant to that Participating Physician's direct written agreement with ACPA. Each such fee schedule shall state the dollar amount allowable for each CPT® code for covered services rendered by such Participating Physician's office. ACPA, upon written request from a Participating Physician or Physician Group that, in each case, has entered into a written contract directly with ACPA, will provide the fee schedule for up to fifty (50) CPT codes, as specified by such Participating Physician. ACPA shall be obligated to honor only one such request made annually by such Participating Physician. ACPA will attempt to include provisions in its agreements with Delegated Entities that require comparable disclosure.

J. ACPA agrees to disclose on its Provider Website by December 31, 2005, or as soon thereafter as practicable, its reimbursement policies for all codes and procedures related to covered services that are bundled or paid at a discounted rate. The certification to be filed pursuant to paragraph 2.G must include pertinent portions of the Provider Website, or other medium through which it makes such disclosure, as the same exists as of the date of such certification.

K. ACPA agrees to take actions necessary on its part to cause the claim-editing software program it uses to continue to produce editing results consistent with the standards set forth in items 1-4 below and, if ACPA has actual knowledge of non-conformity with such standards, to take reasonable actions necessary on its part to promptly modify such software to any extent necessary to conform to such standards; provided that nothing in this paragraph is intended or shall be construed to require ACPA to pay for anything other than covered services for plan members, to make payment at any particular rates, to limit ACPA's right to deny or adjust claims based on reasonable belief of fraudulent, abusive or other inappropriate billing practices (so long as the Physician has been given the opportunity to provide clinical records and ACPA has reviewed any clinical records so provided).

- (1) ACPA agrees that it will recognize modifier codes when applying Multiple Procedure Logic to a claim that contains more than one procedure.
- (2) No global periods for surgical procedures shall be longer than any period then designated on a national basis by CMS for such surgical procedures.
- (3) ACPA shall not automatically change a code to one reflecting a reduced intensity of the service when such CPT® code is one among a series that differentiates among simple, intermediate and complex. This provision shall not, however, apply to changing a new patient code to a code for an existing patient when a claim for that patient has previously been submitted under a new patient code.
- (4) ACPA shall update its claims editing software at least once each year to (A) cause its claim processing systems to recognize any new CPT® Codes or any reclassifications of existing CPT® Codes, and (B) cause its claim processing personnel to recognize any additions to HCPCS Level II Codes promulgated by CMS since the prior annual update.

L. To the extent that any of ACPA's claims processing functions are performed by third-parties pursuant to contractual arrangements, ACPA's obligations under this Agreement shall be satisfied if (i) ACPA makes compliance with paragraph 2.A(1), 2.A(2), 2.B. and 2.F. a requirement of any such contract and (ii) it pursues appropriate remedies in the event of the contractor's failure to comply with these obligations.

3. In consideration of the obligations of ACPA set forth in this Agreement, conditioned upon ACPA's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release ACPA together with its successors and assigns, and current officers and directors, from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; and the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of recovery of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

4. In consideration of the obligations of ACPA set forth in this Agreement, conditioned upon ACPA's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against ACPA or its successors and assigns 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, or other prohibited activities), for the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5, below.

5. Specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including ACPA) are any and all of the following:

(1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any claims based upon such obligations as are created by this Agreement, including those created by the Corporate Integrity Agreement referred to in Paragraph 6 below;

(6) Except as specifically stated in this Agreement, any civil or administrative claims against individuals.

6. ACPA has entered into a Corporate Integrity Agreement ("CIA") with OIG-HHS, attached hereto as Exhibit A, which is incorporated into this Agreement by reference. ACPA will immediately upon execution of this Agreement begin implementing its obligations under the CIA.

7. In the event that ACPA fails to comply in good faith with any of the terms of this Settlement Agreement relating to it, or should any of ACPA's representations or warrants be

materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

a. seek specific performance of this Settlement Agreement and the prevailing party shall be entitled to an award of reasonable attorneys fees and costs in its favor; or

b. exercise any other right granted by law.

8. In the event that the United States exercises any of its rights under paragraph 7 of this Agreement, ACPA specifically reserves all of its rights to challenge, defend and contest any such action.

9. In any criminal prosecution or administrative action relating to the Covered Conduct, ACPA waives and will not assert any defenses ACPA may have that are 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 Settlement bars a remedy sought in such criminal prosecution or administrative action. ACPA agrees that this settlement is not punitive in purpose or effect. 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.

10. ACPA fully and finally releases the United States, and the Commonwealth of Pennsylvania, and their agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) that ACPA has asserted, could have asserted, or may assert in the future against the United States and the Commonwealth of Pennsylvania, their agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. The Settlement Amount that ACPA must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare or Medicaid carrier or intermediary or any State payer, if any, related to the Covered Conduct; and ACPA agrees not to resubmit to any Medicare or Medicaid carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of

claims.

12. ACPA agrees to the following:

(a) Unallowable Costs Defined: To the extent applicable, all costs (as defined in the Federal Acquisition Regulations (FAR), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf on ACPA, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the Covered Conduct,

(2) the United States' audit(s) and civil investigations(s) of the Covered Conduct,

(3) ACPA's investigation, defense, and any corrective actions undertaken in direct response to the United States' 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 ACPA makes to the United States pursuant to this Agreement, and

(6) the negotiation of the CIA, and the obligations undertaken pursuant to the CIA to:

(i) Retain an independent review organization to perform annual reviews as described in the CIA; and

(ii) prepare and submit reports to the OIG-HHS, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP). However, nothing in this sub-paragraph affects the status of costs that are not allowable based on any other authority applicable to ACPA. All costs described or set forth in this Paragraph 12(a) are hereafter, unallowable costs.

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for

by ACPA, and ACPA will 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 ACPA or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: ACPA further agrees that within 90 days of the effective date of this Agreement, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA 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 ACPA or any of its subsidiaries, and will 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. ACPA agrees that the United States, at a minimum, will be entitled to recoup from ACPA any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request for payment. Any payment due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by ACPA or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on ACPA or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

13. This Agreement is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not release any claims against any other person or entity.

14. ACPA agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. ACPA waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by

this Agreement.

15. ACPA expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to ACPA, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

16. 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.

17. ACPA represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

18. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania, except that disputes arising under the CIA shall be resolved pursuant to the procedures set forth therein.

19. This Agreement and the Corporate Integrity Agreement which is incorporated by reference, constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only ACPA and OIG-HHS need consent to amendments to the CIA.

20. The undersigned individuals signing this Agreement on behalf of ACPA represent and warrant that they are authorized by ACPA to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

22. This Agreement is effective on the date of signature of the last signatory to the Agreement.

23. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

JAMES G. SHEEHAN
Associate U.S. Attorney
United States Attorney's Office
Eastern District of Pennsylvania

DATED: _____

BY: _____

DAVID R. HOFFMAN
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

LEWIS MORRIS
Chief Counsel to the Inspector
General
Office of Inspector General
United States Department of
Health and Human Services

AMERICHOICE OF PENNSYLVANIA, INC.

DATED: _____

BY: _____

MARY MCSORLEY
Chief Executive Officer, ACPA

DATED: _____

BY: _____

J. SEDWICK SOLLERS III, ESQ.

DATED: _____

BY: _____

JAMES A. BACKSTROM, ESQ.