

AGREEMENT

Whereas, on October 22, 2009, the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (“CMS”), disallowed \$35,325,468 in Federal financial participation claimed by the New Hampshire Department of Health and Human Services (“the State”) under the Medicaid program for federal fiscal year 2004; and

Whereas, the State appealed CMS’ disallowance decision to the Departmental Appeals Board of the U.S. Department of Health and Human Services (“the Board”), and also elected, pursuant to section 1903(d)(5) of the Social Security Act (“the Act”), to retain the amount of the Federal payment in controversy pending a final determination by the Board with respect to the disallowance; and

Whereas, on July 13, 2011, the Board issued a decision upholding the disallowance (Board Decision No. 2399), and, on October 14, 2011, the Board issued a ruling denying the State’s request for reconsideration (Board Ruling No. 2012-2); and

Whereas, the October 14, 2011 ruling on reconsideration is a final determination by the Board with respect to the disallowance; and

Whereas, the total amount of the disallowance that CMS is required to recover is \$35,408,621 (which consists of \$35,325,468 in principal and \$83,153 in interest accumulated under section 1903(d)(5) as of October 14, 2011); and

Whereas, the parties are desirous of resolving all issues relating to the disallowance without further litigation;

Now, therefore, CMS and the State, for good and valuable consideration received, hereby agree as follows:

1. The State agrees to waive any right that it may have to appeal the above-referenced decision and ruling of the Board to United States District Court or to any other court or tribunal, and further agrees that the decision and ruling of the Board in this matter shall be final and unappealable.

2. In consideration of the State's agreement to waive its appeal rights, CMS and the State agree that CMS will recover the total amount of the disallowance under a two-year schedule, as described in paragraph 3 of this Agreement.

3. The total amount of the disallowance will be recovered by the Federal government in eight quarterly installments beginning with the second quarter of Federal fiscal year 2012 (January 1, 2012 to March 31, 2012) and ending with the first quarter of Federal fiscal year 2014 (October 1, 2013 to December 31, 2013). Each installment required under this Agreement shall be effectuated by, and subject to, a negative grant award issued by CMS on or after the first day of the applicable quarter, and shall include additional interest calculated at the rate of one percent (1.00 %) per year on the remaining unpaid balance from October 14, 2011. The amount of each installment (principal plus additional interest) that is due from the State under this agreement is as follows: 1st installment – \$4,501,746; 2nd installment - \$4,503,322; 3rd installment - \$4,493,015; 4th installment - \$4,481,859; 5th installment - \$4,470,218; 6th installment - \$4,458,819; 7th installment - \$4,448,390; and 8th installment - \$4,437,231; for a total recovery by CMS under the schedule of \$35,794,600.

4. The terms and conditions contained herein constitute the entire Agreement between CMS and the State, and supersede any prior discussions or negotiations. Modifications to this Agreement shall be in writing and must be signed by the parties.

5. CMS and the State agree that this Agreement does not constitute an acknowledgement or admission of error or wrongdoing by either party, and that the compromise and settlement of either party's claims will not constitute an admission by either party.

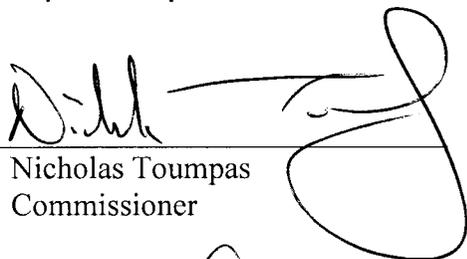
6. Each party shall bear its own attorneys' fees and costs.

7. This Agreement shall be binding upon, and inure to the benefit of CMS and the State. The undersigned represent that they are authorized to enter into this Agreement in their stated capacities on behalf of CMS and the State, as applicable.

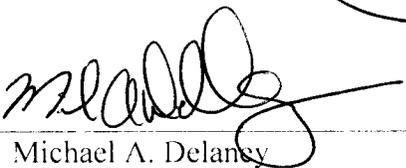
The parties voluntarily and knowingly execute this Agreement by signing their names below on the date[s] indicated. This agreement may be executed in two or more counterparts, each of which shall be deemed an original.

[SIGNATURE PAGES FOLLOWING ON NEXT PAGE]

New Hampshire Department of Health and Human Services

By: 
Nicholas Toumpas
Commissioner

Date: 12/2/11

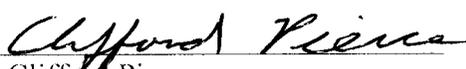
By: 
Michael A. Delaney
Attorney General
New Hampshire Department of Justice

Date: 12/2/11

The Centers for Medicare & Medicaid Services

By: 
Richard R. McGreal
Associate Regional Administrator
CMS/Region I
J.F.K. Fed. Bldg., Room
Boston, MA 02203

Date: 12/7/11

By: 
Clifford Pierce
Assistant Regional Counsel
Office of General Counsel

Date: 12/5/11