

SETTLEMENT AGREEMENT & CONSENT ORDER

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered this 15th day of August, 2001 (the "Effective Date") by and between the State of Connecticut, Department of Social Services ("the Department") and Masonicare, Inc. of Wallingford Connecticut. The above entities will be referred to jointly as the "Parties".

PREAMBLE

WHEREAS, the Department is the single state agency in Connecticut authorized to administer the Medicaid program in Connecticut; and

WHEREAS, Masonicare is the sole corporate member of Masonic Geriatric Healthcare Center ("MGHC"), a long-term care facility licensed by the State of Connecticut Department of Public Health to provide skilled nursing home services ("NH") under the Chronic and Convalescent Hospital ("CCH") and Rest Home with Nursing Supervision ("RHNS") designations and is an enrolled provider in the Connecticut Medicaid Program; and

WHEREAS, MGHC provides licensed Residential Care Home ("RCH") services whose residents are beneficiaries of the state supplement program administered by the Department; and

WHEREAS, MGHC is required to file the Annual Report of Long-Term Care Facility ("Cost Report") that includes costs and statistics claimed for operation of MGHC which are utilized to determine the per diem rates to be paid for the NH and RCH by the Department; and

WHEREAS, the Department conducted a field audit and related procedures of MGHC's 1996 Cost Report and issued an Audit Report on May 2, 2000 which imposed various disallowances, and Masonicare disputes certain of the disallowances imposed by the Department; and

WHEREAS, such audit included disallowances to the 1992 and 1996 cost reports that were used per statute to establish the operating component of NH per diem rates for rate periods between July 1, 1994 and June 30, 2001; and

WHEREAS, such audit included disallowances to the 1991 through 1996 cost reports that were used per statute to establish the RCH per diem rates for rate periods between July 1, 1992 and June 30, 1998; and

WHEREAS, such audit also included disallowances to the property additions reported in the 1991 through 1997 cost reports; and

WHEREAS, such audit disallowances pertaining to property additions reported in the 1991 through 1997 Cost Reports affected NH and RCH per diem rates for the rate periods between July 1, 1992 and June 30, 2001; and

WHEREAS, the property component, excluding the additions made prior to October 1, 1997, of the NH and RCH per diem rates for rate periods after June, 30, 1998 remain unaudited; and

WHEREAS, the operating component of the RCH per diem rates for rate periods after June 30, 1998 remain unaudited; and

WHEREAS, the Department, pursuant to an Order entered on June 19, 2000, commenced an inquiry pursuant to Conn. Gen. Stat. 17b-238 (c) and (d) with respect to the Audit Report issued May 2, 2000 (“the Reimbursement Dispute”).

WHEREAS, representatives of Masonicare have undertaken discussions with the Department, to address the Department’s audit adjustments, and

WHEREAS, beginning prior to the preparation and filing of the MGHC 2000 Long Term Care Facility Cost Report, Masonicare has enhanced its accounting and reporting practices and made other management changes, which reflect its continued commitment to regulatory compliance in Connecticut, and

WHEREAS, Masonicare, and each of its directors, officers, employees and contractors, to the extent possible want to ensure that MGHC's cost reports are in compliance with all statutes and regulations applicable to the Medicaid programs, and

WHEREAS, Masonicare has voluntarily implemented a Corporate Compliance Program and has executed a Corporate Integrity Agreement, with the Department contemporaneously herewith which is incorporated by reference; and

WHEREAS, the Department on June 15, 2001 issued revised rates for MGHC NH for the period covering July 1, 1994 through June 30, 2001 and estimated that \$9,183,000 is due the Department from Masonicare; and

WHEREAS, the Department on June 15, 2001 issued revised rates for MGHC RCH for the period covering July 1, 1992 through June 30, 2001 and estimated that \$1,703,000 is due the Department from Masonicare; and

WHEREAS, Masonicare has agreed to pay the Department \$1,014,000 for costs associated with this investigation; and

WHEREAS, the parties mutually desire to reach a full and final compromise and settlement of all civil and administrative claims that the State of Connecticut and the Department, have or may have against Masonicare and each of its affiliates based on the Reimbursement Dispute, and all issues arising out of or related to the Reimbursement Dispute, and further wish to avoid the delay, expense, and uncertainty of further proceedings in relation to the per diem rates issued as identified above.

TERMS AND CONDITIONS

NOW THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Masonicare agrees to pay the Department the sum of \$11,900,000.00 (Eleven Million Nine Hundred Thousand Dollars), in full and final settlement of disputed claims relating to and arising out of the Reimbursement Dispute as defined herein. The payment of the \$11,900,000.00 obligation shall be made as follows; 1) \$330,555.55 shall be recouped from the Department's July, 2001 monthly Medicaid payment to the MGHC NH, 2) \$278,861.11 shall be recouped from the Department's monthly Medicaid payments to the MGHC NH for a period of thirty-five months beginning in August, 2001 and 3) \$51,694.44 shall be remitted monthly no later than the 15th of each month in the form of a check payable to the Commissioner of Social Services for a period of 35 months beginning in August, 2001.

Masonicare knowingly and voluntarily withdraws any and all perfected rate appeals associated with rates issued on June 15, 2001 and agrees not to file any new appeals relating to the issued rates for rate periods through June 30, 2001. Masonicare further agrees not to file any request for rate adjustments and to withdraw any existing request for rate adjustments for the RCH replacement building or file any RCH or NH request for rate adjustments for any other reason for rate periods through June 30, 2001. Masonicare retains the right to appeal any future adjustments to rates for rate periods through June 30, 2001 provided such appeals are limited to any adjustments which were not subject to the Reimbursement Dispute, including but not limited to the property additions reported subsequent to the 1997 cost report; and the property component, excluding the additions made prior to October 1, 1997, of the NH and RCH per diem rates

for rate periods after June 30, 1998; and the operating component of the RCH per diem rates for the rate periods after June 30, 1998. Masonicare agrees not to appeal disallowances to real property and moveable equipment additions included in the May 2, 2000 audit report that will continue to be applied to rates issued to the NH and RCH for periods after June 30, 2001. Neither any of the payments to the State nor any of the attorneys' fees, accountant fees, consultant fees, or other expenses associated with the Reimbursement Dispute or the inquiry shall be claimed in any cost report filed with this or any other state or the federal government.

2. Masonicare will continue its implementation of the Compliance Program plan set forth in the Corporate Integrity Agreement ("CIA"), identified as Exhibit 1 to this Agreement herein incorporated by reference.

3. Masonicare agrees that from the Effective Date of this Agreement with respect to the matters subject hereto anytime in which Masonicare becomes aware that matters certified as being true and correct or true and accurate in a cost report filed with the Department by its affiliates which are not true and correct or true and accurate, Masonicare shall require the affiliate to file revised pages under oath sufficient to correct the record, regardless of any assessment Masonicare may make concerning the financial impact, or lack thereof, of any change.

4. Stipulated Amounts

Masonicare's compliance with the terms and conditions of this Agreement and the Corporate Integrity Agreement, shall constitute an element of Masonicare's present responsibility with regard to participation in the Connecticut Medicaid program. Pursuant to this Agreement and the Corporate Integrity Agreement, any and all material modifications to this Agreement (including changes to the date on which an obligation is due to be met) shall be requested in writing and agreed to by the Department in writing prior to the date on which the modification is expected to take effect. Absent such written modifications, Masonicare agrees to pay the stipulated amounts as outlined in the Corporate Integrity Agreement.

5. Payment of Stipulated Amounts

a. Upon finding that Masonicare has failed to comply with any of the above-enumerated obligations, the Department shall notify Masonicare and proceed with appropriate actions as outlined in the Corporate Integrity Agreement.

6. Subject to the conditions specified above in Paragraphs numbered 1-5, the Department on behalf of itself, its officers, agents and its offices and departments, hereby releases

Masonicare its affiliates, divisions, departments, predecessors, successors and assigns, and their present and former directors, officers, employees, agents, trustees, or their respective heirs, successors or personal representatives, acting in their individual or representative capacity (the “Released Parties”) from any civil or administrative claim resulting from the Reimbursement Dispute, and for any conduct which was subject to the Department’s section 17b-238(c) (d) inquiry and the costs and expenses thereof, and the Medicaid Cost Reports and the designation of rates which were subject to the Department’s inquiry up to and including the Medicaid rates issued for all rate periods from July 1, 1992 through June 30, 2001.

7. Except as specifically provided in the release set forth in paragraph 6 of this Agreement, the Department reserves all of its rights to take any legal action it deems appropriate. Except as provided in this Agreement, Masonicare reserves all of its rights to contest any such action taken by the Department.

8. The parties understand and agree that this Agreement is in compromise of disputed claims and is a settlement of the Reimbursement Dispute and that it shall neither be construed as an admission of any violation of any federal or state statute, rule or regulation or common law, nor as an admission of liability or wrongdoing of any kind under any state or federal law on the part of the Released Parties

9. The State of Connecticut and the Department agree to release and refrain from instituting or maintaining any administrative claim or action seeking exclusion from the Medicaid program against the released entities under Regulations of Connecticut State Agencies 17(b)-99 or permissive exclusion related to the Reimbursement Dispute including, but not limited to, the areas of salaries, salary allocation, Fair Rental Value and moveable equipment additions reported in the Long Term Care Facility Cost Reports for 1991-1997 and the award to Masonicare of Medicaid rates pursuant to the Provisions of Regulations of Connecticut State Agencies § 17-311-50 et seq. for all rate periods July 1, 1992 up through June 30, 2001.

10. It is agreed that all expenses, including attorney’s fees, accountant fees and consultants fees incurred by or on behalf of Masonicare in connection with (1) the matters covered by this Agreement subject to Section 15 of this Agreement; (2) the Department’s audit and investigation of the matters covered by this Settlement; (3) any Masonicare investigation and corrective actions including those compliance actions identified in Exhibit 1 and incorporated herein by reference; (4) the negotiations and performance of this Agreement; and, (5) the payments made to the

Department provided for in this Agreement, shall be unallowable costs for state and federal accounting and cost reimbursement purposes. These amounts shall be separately accounted for by Masonicare and will not be charged to any state or federal government contract or program.

11. This Agreement and Consent Order, as well as the Corporate Integrity Agreement which is incorporated herein by reference, shall constitute full and final settlement of the Reimbursement Dispute as defined herein. Masonicare agrees that this Settlement Agreement, once approved in writing by the Commissioner, shall relieve the Commissioner from all responsibility to render a final decision regarding said items of aggrievement and items that were the subject of the inquiry and that this Agreement shall be in lieu of a final decision on said items. Further, it is agreed that the Consent Order contained herein shall have the same force and effect of law as an Order entered into as a final decision after a full hearing with Findings Of Fact and Conclusions of Law and that the Consent Order shall become final upon written acceptance and approval by the Commissioner. Masonicare admits all requisite jurisdiction of the Commissioner to issue the Consent Order contained herein. Further, it is agreed that Masonicare hereby waives all rights to seek judicial review or otherwise to contest or challenge the validity of the Consent Order entered pursuant to this Agreement specifically addressing the Reimbursement Dispute, but not including Masonicare's right to appeal sanction provisions as set forth in Regulations of Connecticut State Agencies § 17-83k-3. The Consent Order contained herein shall be enforceable by the Department in the same manner in which a final decision of the Commissioner is enforceable.

12. A. Financial Obligations: In the event that the Department believes that Masonicare is in breach of its financial obligations as described in Paragraph Numbered 1 above, the Department will notify Masonicare of the alleged breach by certified mail, specifying the circumstances of the alleged breach. Masonicare will have thirty (30) days from receipt of the notice to cure the breach, or otherwise to satisfy the Department that it is in full compliance with its financial obligations under this Agreement. If the Department determines that Masonicare is still in breach, it may, at its sole option, exercise any of the following rights:

(i) Declare this Settlement Agreement breached and proceed against any of the released entities for the underlying claims. In this event, each of the released entities waives any statute of limitations defense that would have been available to it, if any, at the time of signing this Settlement Agreement;

(ii) File an action for specific performance of the terms set forth above.

Should the Department prevail in such action, it shall be entitled to an award of reasonable attorneys' fees and related expenses in its favor and against the other parties for the time spent in prosecuting such action;

(iii) Exercise any other statutory, common law, or equitable right.

12. B. Corporate Integrity Agreement: In the event that the Department believes that Masonicare is in material breach of one or more of its obligations under Paragraph 2 (Compliance Program, as outlined in the Corporate Integrity Agreement) of this Agreement, the Department will notify Masonicare of the alleged material breach by certified mail specifying the circumstances of the alleged breach. "Material breach" has been defined in the Corporate Integrity Agreement. All actions constituting a material breach by Masonicare and remedies for curing a material breach are outlined in the Corporate Integrity Agreement.

13. This Agreement shall have no precedential effect whatsoever adverse to the Department or Masonicare and is based upon the unique set of circumstances surrounding this case.

14. All issues which are not part of the Reimbursement Dispute and all rate periods subsequent to that covered by those audit reports, remain subject to all ordinary audit procedures in the ordinary course in accordance with the statutes and regulations.

15. Should any future state or federal legislation, regulation or court order require different treatment by the Department or Masonicare of the issues described herein, including but not limited to, the reporting or reimbursement of costs, this Agreement shall be subject to such legislation, regulation or court order to the same extent as such legislation, regulation or court order applies to other facilities.

16. Any modification to this Agreement and Consent Order shall be in writing and signed by the Department and Masonicare, and forbearance or indulgence in any form or manner by the Department or Masonicare in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation or undertaking to be kept, performed, or discharged by the Department or Masonicare and notwithstanding any such forbearance or indulgence, until complete performance or satisfaction of all such covenants, conditions, duties, obligations and undertakings, the Department shall have the right to invoke any remedy available under this Agreement, or under law or equity.

17. Each signatory warrants by the signature below that he or she has full power and authority to enter into this Agreement on behalf of the party for which he or she signs, and that the signatory has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges by the signatures below that it has read this Agreement, understands it, and agrees to be bound by it.

18. Any notice required or permitted under this Agreement shall be in writing and effective upon receipt. Such notices may be hand delivered or faxed. Alternatively, notice may be given by certified mail with return receipt requested. Mailed notice shall be addressed to the Department as follows:

Director, Quality Assurance
Medical Audit Unit
Department of Social Services
25 Sigourney Street
Hartford, CT 06106

Mailed notice to Masonicare shall be addressed to:

Joan Feldman, Counsel
Shipman & Goodwin, LLP
One American Row
Hartford, CT 06103-2819

Either party may designate a different address or addressee for notice by serving the other party with written notice of the new address or addressee.

19. This Agreement and the following Consent Order shall have no force and effect, nor shall they become a part of the official record, unless or until they are accepted in writing by the Commissioner, at which time they shall become final and effective on the Effective Date without further notice to Masonicare.

FOR MASONICARE

Date: _____

By: _____

Barry M. Spero
President

FOR THE OFFICE OF THE ATTORNEY GENERAL

Date: _____

By: _____

Richard Blumenthal
Attorney General

FOR THE DEPARTMENT OF SOCIAL SERVICES

Date: _____

By: _____

Michael P. Starkowski
Deputy Commissioner
Department of Social Services

CONSENT ORDER

The provisions of the Settlement Agreement between Masonicare and the Department, set forth in paragraphs 1 through 19 above, and the Corporate Integrity Agreement incorporated in the Settlement Agreement by reference are hereby incorporated by reference in this Consent Order accepted as an Order of this Department.

Accepted and approved and Consent Order entered by the Commissioner on the _____ day of _____, 2001.

Patricia Wilson-Coker
Commissioner
Department of Social Services

File No: 003740155

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2. Masonicare will continue its implementation of the Compliance Program plan set forth in the Corporate Integrity Agreement ("CIA"), identified as Exhibit 1 to this Agreement herein incorporated by reference.

3. Masonicare agrees that from the Effective Date of this Agreement with respect to the matters subject hereto anytime in which Masonicare becomes aware that matters certified as being true and correct or true and accurate in a cost report filed with the Department by its affiliates which are not true and correct or true and accurate, Masonicare shall require the affiliate to file revised pages under oath sufficient to correct the record, regardless of any assessment Masonicare may make concerning the financial impact, or lack thereof, of any change.

4. Stipulated Amounts

Masonicare's compliance with the terms and conditions of this Agreement and the Corporate Integrity Agreement, shall constitute an element of Masonicare's present responsibility with regard to participation in the Connecticut Medicaid program. Pursuant to this Agreement and the Corporate Integrity Agreement, any and all material modifications to this Agreement (including changes to the date on which an obligation is due to be met) shall be requested in writing and agreed to by the Department in writing prior to the date on which the modification is expected to take effect. Absent such written modifications, Masonicare agrees to pay the stipulated amounts as outlined in the Corporate Integrity Agreement.

5. Payment of Stipulated Amounts

a. Upon finding that Masonicare has failed to comply with any of the above-enumerated obligations, the Department shall notify Masonicare and proceed with appropriate actions as outlined in the Corporate Integrity Agreement.

6. Subject to the conditions specified above in Paragraphs numbered 1-5, the Department on behalf of itself, its officers, agents and its offices and departments, hereby releases

Masonicare its affiliates, divisions, departments, predecessors, successors and assigns, and their present and former directors, officers, employees, agents, trustees, or their respective heirs, successors or personal representatives, acting in their individual or representative capacity (the “Released Parties”) from any civil or administrative claim resulting from the Reimbursement Dispute, and for any conduct which was subject to the Department’s section 17b-238(c) (d) inquiry and the costs and expenses thereof, and the Medicaid Cost Reports and the designation of rates which were subject to the Department’s inquiry up to and including the Medicaid rates issued for all rate periods from July 1, 1992 through June 30, 2001.

7. Except as specifically provided in the release set forth in paragraph 6 of this Agreement, the Department reserves all of its rights to take any legal action it deems appropriate. Except as provided in this Agreement, Masonicare reserves all of its rights to contest any such action taken by the Department.

8. The parties understand and agree that this Agreement is in compromise of disputed claims and is a settlement of the Reimbursement Dispute and that it shall neither be construed as an admission of any violation of any federal or state statute, rule or regulation or common law, nor as an admission of liability or wrongdoing of any kind under any state or federal law on the part of the Released Parties

9. The State of Connecticut and the Department agree to release and refrain from instituting or maintaining any administrative claim or action seeking exclusion from the Medicaid program against the released entities under Regulations of Connecticut State Agencies 17(b)-99 or permissive exclusion related to the Reimbursement Dispute including, but not limited to, the areas of salaries, salary allocation, Fair Rental Value and moveable equipment additions reported in the Long Term Care Facility Cost Reports for 1991-1997 and the award to Masonicare of Medicaid rates pursuant to the Provisions of Regulations of Connecticut State Agencies § 17-311-50 et seq. for all rate periods July 1, 1992 up through June 30, 2001.

10. It is agreed that all expenses, including attorney’s fees, accountant fees and consultants fees incurred by or on behalf of Masonicare in connection with (1) the matters covered by this Agreement subject to Section 15 of this Agreement; (2) the Department’s audit and investigation of the matters covered by this Settlement; (3) any Masonicare investigation and corrective actions including those compliance actions identified in Exhibit 1 and incorporated herein by reference; (4) the negotiations and performance of this Agreement; and, (5) the payments made to the

Department provided for in this Agreement, shall be unallowable costs for state and federal accounting and cost reimbursement purposes. These amounts shall be separately accounted for by Masonicare and will not be charged to any state or federal government contract or program.

11. This Agreement and Consent Order, as well as the Corporate Integrity Agreement which is incorporated herein by reference, shall constitute full and final settlement of the Reimbursement Dispute as defined herein. Masonicare agrees that this Settlement Agreement, once approved in writing by the Commissioner, shall relieve the Commissioner from all responsibility to render a final decision regarding said items of aggrievement and items that were the subject of the inquiry and that this Agreement shall be in lieu of a final decision on said items. Further, it is agreed that the Consent Order contained herein shall have the same force and effect of law as an Order entered into as a final decision after a full hearing with Findings Of Fact and Conclusions of Law and that the Consent Order shall become final upon written acceptance and approval by the Commissioner. Masonicare admits all requisite jurisdiction of the Commissioner to issue the Consent Order contained herein. Further, it is agreed that Masonicare hereby waives all rights to seek judicial review or otherwise to contest or challenge the validity of the Consent Order entered pursuant to this Agreement specifically addressing the Reimbursement Dispute, but not including Masonicare's right to appeal sanction provisions as set forth in Regulations of Connecticut State Agencies § 17-83k-3. The Consent Order contained herein shall be enforceable by the Department in the same manner in which a final decision of the Commissioner is enforceable.

12. A. Financial Obligations: In the event that the Department believes that Masonicare is in breach of its financial obligations as described in Paragraph Numbered 1 above, the Department will notify Masonicare of the alleged breach by certified mail, specifying the circumstances of the alleged breach. Masonicare will have thirty (30) days from receipt of the notice to cure the breach, or otherwise to satisfy the Department that it is in full compliance with its financial obligations under this Agreement. If the Department determines that Masonicare is still in breach, it may, at its sole option, exercise any of the following rights:

(i) Declare this Settlement Agreement breached and proceed against any of the released entities for the underlying claims. In this event, each of the released entities waives any statute of limitations defense that would have been available to it, if any, at the time of signing this Settlement Agreement;

(ii) File an action for specific performance of the terms set forth above.

Should the Department prevail in such action, it shall be entitled to an award of reasonable attorneys' fees and related expenses in its favor and against the other parties for the time spent in prosecuting such action;

(iii) Exercise any other statutory, common law, or equitable right.

12. B. Corporate Integrity Agreement: In the event that the Department believes that Masonicare is in material breach of one or more of its obligations under Paragraph 2 (Compliance Program, as outlined in the Corporate Integrity Agreement) of this Agreement, the Department will notify Masonicare of the alleged material breach by certified mail specifying the circumstances of the alleged breach. "Material breach" has been defined in the Corporate Integrity Agreement. All actions constituting a material breach by Masonicare and remedies for curing a material breach are outlined in the Corporate Integrity Agreement.

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16. Any modification to this Agreement and Consent Order shall be in writing and signed by the Department and Masonicare, and forbearance or indulgence in any form or manner by the Department or Masonicare in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation or undertaking to be kept, performed, or discharged by the Department or Masonicare and notwithstanding any such forbearance or indulgence, until complete performance or satisfaction of all such covenants, conditions, duties, obligations and undertakings, the Department shall have the right to invoke any remedy available under this Agreement, or under law or equity.

17. Each signatory warrants by the signature below that he or she has full power and authority to enter into this Agreement on behalf of the party for which he or she signs, and that the signatory has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges by the signatures below that it has read this Agreement, understands it, and agrees to be bound by it.

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Director, Quality Assurance
Medical Audit Unit
Department of Social Services
25 Sigourney Street
Hartford, CT 06106

Mailed notice to Masonicare shall be addressed to:

Joan Feldman, Counsel
Shipman & Goodwin, LLP
One American Row
Hartford, CT 06103-2819

Either party may designate a different address or addressee for notice by serving the other party with written notice of the new address or addressee.

19. This Agreement and the following Consent Order shall have no force and effect, nor shall they become a part of the official record, unless or until they are accepted in writing by the Commissioner, at which time they shall become final and effective on the Effective Date without further notice to Masonicare.

FOR MASONICARE

Date: _____

By: _____

Barry M. Spero
President

FOR THE OFFICE OF THE ATTORNEY GENERAL

Date: _____

By: _____

Richard Blumenthal
Attorney General

FOR THE DEPARTMENT OF SOCIAL SERVICES

Date: _____

By: _____

Michael P. Starkowski
Deputy Commissioner
Department of Social Services

CONSENT ORDER

The provisions of the Settlement Agreement between Masonicare and the Department, set forth in paragraphs 1 through 19 above, and the Corporate Integrity Agreement incorporated in the Settlement Agreement by reference are hereby incorporated by reference in this Consent Order accepted as an Order of this Department.

Accepted and approved and Consent Order entered by the Commissioner on the _____ day of _____, 2001.

Patricia Wilson-Coker
Commissioner
Department of Social Services

File No: 003740155

SETTLEMENT AGREEMENT & CONSENT ORDER

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered this 15th day of August, 2001 (the "Effective Date") by and between the State of Connecticut, Department of Social Services ("the Department") and Masonicare, Inc. of Wallingford Connecticut. The above entities will be referred to jointly as the "Parties".

PREAMBLE

WHEREAS, the Department is the single state agency in Connecticut authorized to administer the Medicaid program in Connecticut; and

WHEREAS, Masonicare is the sole corporate member of Masonic Geriatric Healthcare Center ("MGHC"), a long-term care facility licensed by the State of Connecticut Department of Public Health to provide skilled nursing home services ("NH") under the Chronic and Convalescent Hospital ("CCH") and Rest Home with Nursing Supervision ("RHNS") designations and is an enrolled provider in the Connecticut Medicaid Program; and

WHEREAS, MGHC provides licensed Residential Care Home ("RCH") services whose residents are beneficiaries of the state supplement program administered by the Department; and

WHEREAS, MGHC is required to file the Annual Report of Long-Term Care Facility ("Cost Report") that includes costs and statistics claimed for operation of MGHC which are utilized to determine the per diem rates to be paid for the NH and RCH by the Department; and

WHEREAS, the Department conducted a field audit and related procedures of MGHC's 1996 Cost Report and issued an Audit Report on May 2, 2000 which imposed various disallowances, and Masonicare disputes certain of the disallowances imposed by the Department; and

WHEREAS, such audit included disallowances to the 1992 and 1996 cost reports that were used per statute to establish the operating component of NH per diem rates for rate periods between July 1, 1994 and June 30, 2001; and

WHEREAS, such audit included disallowances to the 1991 through 1996 cost reports that were used per statute to establish the RCH per diem rates for rate periods between July 1, 1992 and June 30, 1998; and

WHEREAS, such audit also included disallowances to the property additions reported in the 1991 through 1997 cost reports; and

WHEREAS, such audit disallowances pertaining to property additions reported in the 1991 through 1997 Cost Reports affected NH and RCH per diem rates for the rate periods between July 1, 1992 and June 30, 2001; and

WHEREAS, the property component, excluding the additions made prior to October 1, 1997, of the NH and RCH per diem rates for rate periods after June, 30, 1998 remain unaudited; and

WHEREAS, the operating component of the RCH per diem rates for rate periods after June 30, 1998 remain unaudited; and

WHEREAS, the Department, pursuant to an Order entered on June 19, 2000, commenced an inquiry pursuant to Conn. Gen. Stat. 17b-238 (c) and (d) with respect to the Audit Report issued May 2, 2000 (“the Reimbursement Dispute”).

WHEREAS, representatives of Masonicare have undertaken discussions with the Department, to address the Department’s audit adjustments, and

WHEREAS, beginning prior to the preparation and filing of the MGHC 2000 Long Term Care Facility Cost Report, Masonicare has enhanced its accounting and reporting practices and made other management changes, which reflect its continued commitment to regulatory compliance in Connecticut, and

WHEREAS, Masonicare, and each of its directors, officers, employees and contractors, to the extent possible want to ensure that MGHC's cost reports are in compliance with all statutes and regulations applicable to the Medicaid programs, and

WHEREAS, Masonicare has voluntarily implemented a Corporate Compliance Program and has executed a Corporate Integrity Agreement, with the Department contemporaneously herewith which is incorporated by reference; and

WHEREAS, the Department on June 15, 2001 issued revised rates for MGHC NH for the period covering July 1, 1994 through June 30, 2001 and estimated that \$9,183,000 is due the Department from Masonicare; and

WHEREAS, the Department on June 15, 2001 issued revised rates for MGHC RCH for the period covering July 1, 1992 through June 30, 2001 and estimated that \$1,703,000 is due the Department from Masonicare; and

WHEREAS, Masonicare has agreed to pay the Department \$1,014,000 for costs associated with this investigation; and

WHEREAS, the parties mutually desire to reach a full and final compromise and settlement of all civil and administrative claims that the State of Connecticut and the Department, have or may have against Masonicare and each of its affiliates based on the Reimbursement Dispute, and all issues arising out of or related to the Reimbursement Dispute, and further wish to avoid the delay, expense, and uncertainty of further proceedings in relation to the per diem rates issued as identified above.

TERMS AND CONDITIONS

NOW THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Masonicare agrees to pay the Department the sum of \$11,900,000.00 (Eleven Million Nine Hundred Thousand Dollars), in full and final settlement of disputed claims relating to and arising out of the Reimbursement Dispute as defined herein. The payment of the \$11,900,000.00 obligation shall be made as follows; 1) \$330,555.55 shall be recouped from the Department's July, 2001 monthly Medicaid payment to the MGHC NH, 2) \$278,861.11 shall be recouped from the Department's monthly Medicaid payments to the MGHC NH for a period of thirty-five months beginning in August, 2001 and 3) \$51,694.44 shall be remitted monthly no later than the 15th of each month in the form of a check payable to the Commissioner of Social Services for a period of 35 months beginning in August, 2001.

Masonicare knowingly and voluntarily withdraws any and all perfected rate appeals associated with rates issued on June 15, 2001 and agrees not to file any new appeals relating to the issued rates for rate periods through June 30, 2001. Masonicare further agrees not to file any request for rate adjustments and to withdraw any existing request for rate adjustments for the RCH replacement building or file any RCH or NH request for rate adjustments for any other reason for rate periods through June 30, 2001. Masonicare retains the right to appeal any future adjustments to rates for rate periods through June 30, 2001 provided such appeals are limited to any adjustments which were not subject to the Reimbursement Dispute, including but not limited to the property additions reported subsequent to the 1997 cost report; and the property component, excluding the additions made prior to October 1, 1997, of the NH and RCH per diem rates

for rate periods after June 30, 1998; and the operating component of the RCH per diem rates for the rate periods after June 30, 1998. Masonicare agrees not to appeal disallowances to real property and moveable equipment additions included in the May 2, 2000 audit report that will continue to be applied to rates issued to the NH and RCH for periods after June 30, 2001. Neither any of the payments to the State nor any of the attorneys' fees, accountant fees, consultant fees, or other expenses associated with the Reimbursement Dispute or the inquiry shall be claimed in any cost report filed with this or any other state or the federal government.

2. Masonicare will continue its implementation of the Compliance Program plan set forth in the Corporate Integrity Agreement ("CIA"), identified as Exhibit 1 to this Agreement herein incorporated by reference.

3. Masonicare agrees that from the Effective Date of this Agreement with respect to the matters subject hereto anytime in which Masonicare becomes aware that matters certified as being true and correct or true and accurate in a cost report filed with the Department by its affiliates which are not true and correct or true and accurate, Masonicare shall require the affiliate to file revised pages under oath sufficient to correct the record, regardless of any assessment Masonicare may make concerning the financial impact, or lack thereof, of any change.

4. Stipulated Amounts

Masonicare's compliance with the terms and conditions of this Agreement and the Corporate Integrity Agreement, shall constitute an element of Masonicare's present responsibility with regard to participation in the Connecticut Medicaid program. Pursuant to this Agreement and the Corporate Integrity Agreement, any and all material modifications to this Agreement (including changes to the date on which an obligation is due to be met) shall be requested in writing and agreed to by the Department in writing prior to the date on which the modification is expected to take effect. Absent such written modifications, Masonicare agrees to pay the stipulated amounts as outlined in the Corporate Integrity Agreement.

5. Payment of Stipulated Amounts

a. Upon finding that Masonicare has failed to comply with any of the above-enumerated obligations, the Department shall notify Masonicare and proceed with appropriate actions as outlined in the Corporate Integrity Agreement.

6. Subject to the conditions specified above in Paragraphs numbered 1-5, the Department on behalf of itself, its officers, agents and its offices and departments, hereby releases

Masonicare its affiliates, divisions, departments, predecessors, successors and assigns, and their present and former directors, officers, employees, agents, trustees, or their respective heirs, successors or personal representatives, acting in their individual or representative capacity (the “Released Parties”) from any civil or administrative claim resulting from the Reimbursement Dispute, and for any conduct which was subject to the Department’s section 17b-238(c) (d) inquiry and the costs and expenses thereof, and the Medicaid Cost Reports and the designation of rates which were subject to the Department’s inquiry up to and including the Medicaid rates issued for all rate periods from July 1, 1992 through June 30, 2001.

7. Except as specifically provided in the release set forth in paragraph 6 of this Agreement, the Department reserves all of its rights to take any legal action it deems appropriate. Except as provided in this Agreement, Masonicare reserves all of its rights to contest any such action taken by the Department.

8. The parties understand and agree that this Agreement is in compromise of disputed claims and is a settlement of the Reimbursement Dispute and that it shall neither be construed as an admission of any violation of any federal or state statute, rule or regulation or common law, nor as an admission of liability or wrongdoing of any kind under any state or federal law on the part of the Released Parties

9. The State of Connecticut and the Department agree to release and refrain from instituting or maintaining any administrative claim or action seeking exclusion from the Medicaid program against the released entities under Regulations of Connecticut State Agencies 17(b)-99 or permissive exclusion related to the Reimbursement Dispute including, but not limited to, the areas of salaries, salary allocation, Fair Rental Value and moveable equipment additions reported in the Long Term Care Facility Cost Reports for 1991-1997 and the award to Masonicare of Medicaid rates pursuant to the Provisions of Regulations of Connecticut State Agencies § 17-311-50 et seq. for all rate periods July 1, 1992 up through June 30, 2001.

10. It is agreed that all expenses, including attorney’s fees, accountant fees and consultants fees incurred by or on behalf of Masonicare in connection with (1) the matters covered by this Agreement subject to Section 15 of this Agreement; (2) the Department’s audit and investigation of the matters covered by this Settlement; (3) any Masonicare investigation and corrective actions including those compliance actions identified in Exhibit 1 and incorporated herein by reference; (4) the negotiations and performance of this Agreement; and, (5) the payments made to the

Department provided for in this Agreement, shall be unallowable costs for state and federal accounting and cost reimbursement purposes. These amounts shall be separately accounted for by Masonicare and will not be charged to any state or federal government contract or program.

11. This Agreement and Consent Order, as well as the Corporate Integrity Agreement which is incorporated herein by reference, shall constitute full and final settlement of the Reimbursement Dispute as defined herein. Masonicare agrees that this Settlement Agreement, once approved in writing by the Commissioner, shall relieve the Commissioner from all responsibility to render a final decision regarding said items of aggrievement and items that were the subject of the inquiry and that this Agreement shall be in lieu of a final decision on said items. Further, it is agreed that the Consent Order contained herein shall have the same force and effect of law as an Order entered into as a final decision after a full hearing with Findings Of Fact and Conclusions of Law and that the Consent Order shall become final upon written acceptance and approval by the Commissioner. Masonicare admits all requisite jurisdiction of the Commissioner to issue the Consent Order contained herein. Further, it is agreed that Masonicare hereby waives all rights to seek judicial review or otherwise to contest or challenge the validity of the Consent Order entered pursuant to this Agreement specifically addressing the Reimbursement Dispute, but not including Masonicare's right to appeal sanction provisions as set forth in Regulations of Connecticut State Agencies § 17-83k-3. The Consent Order contained herein shall be enforceable by the Department in the same manner in which a final decision of the Commissioner is enforceable.

12. A. Financial Obligations: In the event that the Department believes that Masonicare is in breach of its financial obligations as described in Paragraph Numbered 1 above, the Department will notify Masonicare of the alleged breach by certified mail, specifying the circumstances of the alleged breach. Masonicare will have thirty (30) days from receipt of the notice to cure the breach, or otherwise to satisfy the Department that it is in full compliance with its financial obligations under this Agreement. If the Department determines that Masonicare is still in breach, it may, at its sole option, exercise any of the following rights:

(i) Declare this Settlement Agreement breached and proceed against any of the released entities for the underlying claims. In this event, each of the released entities waives any statute of limitations defense that would have been available to it, if any, at the time of signing this Settlement Agreement;

(ii) File an action for specific performance of the terms set forth above.

Should the Department prevail in such action, it shall be entitled to an award of reasonable attorneys' fees and related expenses in its favor and against the other parties for the time spent in prosecuting such action;

(iii) Exercise any other statutory, common law, or equitable right.

12. B. Corporate Integrity Agreement: In the event that the Department believes that Masonicare is in material breach of one or more of its obligations under Paragraph 2 (Compliance Program, as outlined in the Corporate Integrity Agreement) of this Agreement, the Department will notify Masonicare of the alleged material breach by certified mail specifying the circumstances of the alleged breach. "Material breach" has been defined in the Corporate Integrity Agreement. All actions constituting a material breach by Masonicare and remedies for curing a material breach are outlined in the Corporate Integrity Agreement.

13. This Agreement shall have no precedential effect whatsoever adverse to the Department or Masonicare and is based upon the unique set of circumstances surrounding this case.

14. All issues which are not part of the Reimbursement Dispute and all rate periods subsequent to that covered by those audit reports, remain subject to all ordinary audit procedures in the ordinary course in accordance with the statutes and regulations.

15. Should any future state or federal legislation, regulation or court order require different treatment by the Department or Masonicare of the issues described herein, including but not limited to, the reporting or reimbursement of costs, this Agreement shall be subject to such legislation, regulation or court order to the same extent as such legislation, regulation or court order applies to other facilities.

16. Any modification to this Agreement and Consent Order shall be in writing and signed by the Department and Masonicare, and forbearance or indulgence in any form or manner by the Department or Masonicare in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation or undertaking to be kept, performed, or discharged by the Department or Masonicare and notwithstanding any such forbearance or indulgence, until complete performance or satisfaction of all such covenants, conditions, duties, obligations and undertakings, the Department shall have the right to invoke any remedy available under this Agreement, or under law or equity.

17. Each signatory warrants by the signature below that he or she has full power and authority to enter into this Agreement on behalf of the party for which he or she signs, and that the signatory has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges by the signatures below that it has read this Agreement, understands it, and agrees to be bound by it.

18. Any notice required or permitted under this Agreement shall be in writing and effective upon receipt. Such notices may be hand delivered or faxed. Alternatively, notice may be given by certified mail with return receipt requested. Mailed notice shall be addressed to the Department as follows:

Director, Quality Assurance
Medical Audit Unit
Department of Social Services
25 Sigourney Street
Hartford, CT 06106

Mailed notice to Masonicare shall be addressed to:

Joan Feldman, Counsel
Shipman & Goodwin, LLP
One American Row
Hartford, CT 06103-2819

Either party may designate a different address or addressee for notice by serving the other party with written notice of the new address or addressee.

19. This Agreement and the following Consent Order shall have no force and effect, nor shall they become a part of the official record, unless or until they are accepted in writing by the Commissioner, at which time they shall become final and effective on the Effective Date without further notice to Masonicare.

FOR MASONICARE

Date: _____

By: _____

Barry M. Spero
President

FOR THE OFFICE OF THE ATTORNEY GENERAL

Date: _____

By: _____

Richard Blumenthal
Attorney General

FOR THE DEPARTMENT OF SOCIAL SERVICES

Date: _____

By: _____

Michael P. Starkowski
Deputy Commissioner
Department of Social Services

CONSENT ORDER

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Patricia Wilson-Coker
Commissioner
Department of Social Services

File No: 003740155