

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

UNITED STATES OF AMERICA and) THE STATE OF TENNESSEE, <i>ex rel.</i>) DENNIS DODSON)) Plaintiffs/Relator,)) v.)) THE A.I.M. CENTER, INC.)) Defendant.) _____))	Civil Action No. 1:11-CV-182 MATTICE/CARTER
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JOINT NOTICE OF SETTLEMENT

The United States of America (“United States”) and the State of Tennessee (“Tennessee”) (collectively “the Government”) hereby notify the Court that the parties have reached an agreement to resolve this action. A copy of the Settlement Agreement (“Agreement”) between the United States, Tennessee, The A.I.M. Center, Inc., and the Relator is attached to this Notice as Exhibit 1. Pursuant to the terms of the Agreement, upon payment of the settlement proceeds, the parties will promptly file a stipulation of dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. Settlement proceeds are expected to be received no later than within ten days after final execution of the Agreement.

Respectfully submitted,

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY

By: /s/ Mary Elizabeth McCullohs
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ROBERT E. COOPER, JR.
ATTORNEY GENERAL & REPORTER

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CERTIFICATE OF SERVICE

I do hereby certify that this Joint Notice of Settlement has been filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail and/or facsimile or hand delivery. Parties may access this filing through the Court's electronic filing system.

This 13th day of February.

/s/ Mary Elizabeth McCullohs
Mary Elizabeth McCullohs
Special Assistant U.S. Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the “United States”); the State of Tennessee, acting through the Tennessee Attorney General and on behalf of its Medicaid program known as TennCare (collectively “Tennessee”); Dennis Dodson (Relator); and The A.I.M. Center, Inc. (AIM) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. AIM is a domestic not-for-profit corporation organized and existing under the laws of the State of Tennessee, with its principal place of business in Chattanooga, Tennessee. AIM operates a facility (the AIM Center) in Chattanooga, Hamilton County, Tennessee, which offers psychosocial rehabilitation and other services to certain residents of the Chattanooga, Hamilton County area, including TennCare/Medicaid beneficiaries.

B. On July 8, 2011, Relator filed a qui tam action in the United States District Court for the Eastern District of Tennessee captioned *United States ex rel. Dennis Dodson and the State of Tennessee ex rel. Dennis Dodson v. The A.I.M. Center, Inc.*, No.1:11-cv-182, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b), and the Tennessee Medicaid False Claims Act, Tenn. Code Ann. § 71-5-181(b) (the “Civil Action”). The Relator alleged that AIM submitted claims to the TennCare/Medicaid program for psychosocial rehabilitation services - *per diem*, when the criteria for coverage and payment for such claims for services were not met. The United States and Tennessee notified the Court of their election to intervene in part and to decline to intervene in part on January 11, 2013. The United States and

Tennessee filed a joint Complaint in Intervention on February 15, 2013. The United States and Tennessee subsequently filed a First Amended Complaint on May 23, 2013.

C. AIM submitted, or caused to be submitted, claims for payment to the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396v, through Tennessee's Medicaid program known as TennCare.

D. TennCare/Medicaid reimburses for services based on the submission of claims containing standardized numeric codes set out in the Healthcare Common Procedure Coding System (HCPCS). HCPCS codes describe the type of service in general terms and, in certain instances, identifies a defined unit of service for reporting and billing purposes. Psychosocial rehabilitation (PSR) services is an inclusive term used to identify a variety of mental health and other services provided to adult beneficiaries to aid the beneficiaries' process of recovery and successful community integration. Supported Employment (SE) services are generally understood to be a narrower subset of PSR services intended to help individuals with mental illnesses or disabilities participate in the labor market. A PSR or SE service may be identified either as *per diem* (HCPCS Code H2018 for PSR or H2024 for SE) or per 15 minutes (Code H2017 or H2023).

E. The United States and Tennessee contend that they have civil claims against AIM for engaging in the following alleged conduct:

1. During the period from January 1, 2009 through December 31, 2012, improperly submitting or causing the submission of false claims to the TennCare/Medicaid program for *per diem* PSR services (HCPCS Code H2018) through upcoding;
2. During the period from January 1, 2009 through December 31, 2012, improperly submitting or causing the submission of false claims to the TennCare/Medicaid

program for *per diem* PSR services that lacked sufficient documentation to support the claims as billed;

3. During the period from January 1, 2009 through July 31, 2011, improperly submitting or causing the submission of false claims to the TennCare/Medicaid program for SE services through the concurrent submission of claims for SE services per 15 minutes (HCPCS Code H2023) and for PSR services, *per diem*, when those claims were for services provided to the same beneficiary on the same date of service, and thereafter knowingly or recklessly failing to timely report and refund overpayments received as a result of those false claims; and
4. During the period from January 1, 2009 through December 31, 2012, improperly submitting or causing the submission of false claims to the TennCare/Medicaid program for *per diem* PSR services not involving face-to-face interaction between AIM staff and TennCare beneficiaries.

The conduct described in this Paragraph E is referred to below as the “Covered Conduct.”

F. This Settlement Agreement is neither an admission of liability by AIM nor a concession by the United States or Tennessee that their claims are not well founded.

G. Relator claims entitlement under 31 U.S.C. § 3730(d) and Tenn. Code Ann. § 71-5-183(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorney’s fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. AIM agrees to pay to the United States and Tennessee the total sum of Eight Hundred Thousand dollars (\$800,000.00) (the "Settlement Amount") to be paid as follows:
 - a. AIM shall pay to the United States the sum of Four Hundred Forty Thousand dollars (\$440,000.00) ("Federal Settlement Amount") no later than 10 days after the Effective Date of this Agreement. AIM's payment to the United States shall be made by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Tennessee.
 - b. AIM shall pay the State of Tennessee the sum of Three Hundred Sixty Thousand dollars (\$360,000.00) ("Tennessee Settlement Amount") no later than 10 days after the Effective Date of this Agreement. AIM's payment to Tennessee shall be made by electronic funds transfer pursuant to written instructions to be provided by the Office of the Tennessee Attorney General.
2. Conditioned upon the United States receiving the Federal Settlement Amount from AIM, and as soon as feasible after receipt, the United States shall pay \$66,000.00 to Relator by electronic funds transfer. Conditioned upon Tennessee receiving the Tennessee Settlement Amount from AIM, and as soon as feasible after receipt, Tennessee shall pay \$54,000.00 to Relator by electronic funds transfer.
3. AIM shall pay to counsel for the Relator within ten (10) days of the Effective Date of this Agreement the sum of \$10,749.54 for Relator's attorney's fees and \$476.65 for Relator's costs and expenses (a total of \$11,226.19) pursuant to written instructions provided by counsel for the Relator.

4. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon timely payment in full of the Settlement Amount as described in Paragraph 1 above, the United States releases AIM from any civil or administrative monetary claim that the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment under mistake of fact, unjust enrichment, conversion, and fraud.

5. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of AIM as set forth in this Agreement, and conditioned upon payment in full of the Settlement Amount as described in Paragraph 1 above, Tennessee (on behalf of itself, its officers, agents, agencies, and departments) agrees:

a. to release AIM from any civil or administrative monetary claim Tennessee has or may have for the Covered Conduct or the allegations in the Civil Action under the Tennessee Medicaid False Claims Act, Tenn. Code Ann. § 71-5-181, *et seq.*, or the common law theories of payment under mistake of fact, unjust enrichment, conversion, and fraud; and

b. to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from TennCare, and other state health care programs (as defined in Tenn. Comp. R. & Regs. 1200-13-.08) against AIM for the Covered Conduct or the allegations in the Civil Actions, except as specifically reserved in other portions of this Agreement.

Tennessee does not have the authority, and does not intend, to release AIM from any claims or actions which may be asserted by private payors or insurers, including those that are paid by

TennCare on a capitated basis. Tennessee acknowledges the provisions of sections 2.20.1.7 - 2.20.1.7.3 of the Contractor Risk Agreement (CRA), and reasonably expects that upon AIM's payment in full of the Settlement Amount, those provisions will operate to preclude any TennCare/Medicaid Managed Care Organization (MCO) from taking any actions to recoup funds paid to AIM as a result of the Covered Conduct.

6. Subject to the exceptions in Paragraph 8 below, and conditioned upon payment in full of the Settlement Amount described in Paragraph 1 above, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases AIM, its owners, officers, agents, attorneys, and employees from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and on behalf of Tennessee for the Covered Conduct under the Tennessee Medicaid False Claims Act, Tenn. Code Ann. § 71-5-181, *et seq.* Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, further releases AIM, its owners, officers, agents, attorneys, and employees from any other cause of action whatsoever which Relator has or may have against AIM; provided, that Relator's release, including the release of any claims Relator asserted or could have asserted on behalf of the United States or Tennessee, is without prejudice to the United States or Tennessee.

7. In consideration of the obligations of AIM in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and AIM, and conditioned upon AIM's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against AIM 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, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 8 below (concerning excluded claims), and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude AIM from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below.

8. Notwithstanding the releases given in paragraphs 4, 5, 6, and 7 of this Agreement, or any other term of this Agreement, the following claims of the United States and of Tennessee, to the extent applicable, are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States or Tennessee (or their respective agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- i. Any liability of individuals.

9. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and Tenn. Code Ann. § 71-5-183(c)(2)(B). Conditioned upon Relator's receipt of the payments described in Paragraph 2 above, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, Tennessee, and their respective agencies, officers, agents, employees, and servants from any claims arising from the filing of the Civil Action, or under 31 U.S.C. § 3730 or Tenn. Code Ann. § 71-5-181 *et seq.*, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Conditioned upon payment in full of the amount described in Paragraph 3 above, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases AIM, its owners, officers, agents, attorneys, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) or Tenn. Code Ann. § 71-5-183(d) for expenses or attorney's fees and costs, and any other cause of action Relator has against AIM as of the Effective Date of this Agreement.

11. AIM waives and shall not assert any defenses AIM may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States or Tennessee concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. AIM fully and finally releases the United States, Tennessee, and their respective agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that AIM has asserted, could have asserted, or may assert in the future against the United States, Tennessee and their respective agencies, officers, agents, employees, and servants, related to the allegations of the Civil Action, the Covered Conduct, and the investigation and prosecution thereof by the United States and Tennessee.

13. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any TennCare/Medicaid Managed Care Organization (MCO) or any state payer, related to the Covered Conduct; and AIM agrees not to resubmit or cause the resubmission of any previously denied claims related to the Covered Conduct to any TennCare MCO, or any state payer, and agrees not to appeal any such denials of claims.

14. AIM agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of AIM, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and Tennessee's audit(s) and civil investigation(s) of the matters covered by this Agreement;

(3) any investigation, defense, and corrective actions undertaken by AIM in response to the United States' and Tennessee's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement;

(5) the payments AIM makes to the United States and Tennessee pursuant to this Agreement and any payments that AIM may make to Relator, including costs and attorney's fees; and

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

(i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and

(ii) prepare and submit reports to the OIG-HHS,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in this paragraph 14.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to AIM.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by AIM, and AIM shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost

report, cost statement, information statement, or payment request submitted by AIM or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: AIM further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by AIM or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. AIM agrees that the United States, at a minimum, shall be entitled to recoup from AIM any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States 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 AIM or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on AIM or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

15. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 16 (waiver for beneficiaries paragraph), below.

16. AIM agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

17. Upon receipt of the payments described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

18. Subject to the provisions of Paragraph 3 of this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

20. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Tennessee. For purposes of construing this Agreement, this

Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

24. This Agreement is binding on AIM's successors, transferees, heirs, and assigns.

25. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

26. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

27. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[Signatures begin on the following page]

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____



WILLIAM C. KILLIAN
UNITED STATES ATTORNEY
Eastern District of Tennessee

DATED: _____

BY: _____

ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE UNITED STATES OF AMERICA

DATED: _____

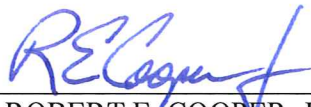
BY: _____
WILLIAM C. KILLIAN
UNITED STATES ATTORNEY
Eastern District of Tennessee

DATED: 2/10/14

BY: Robert K. DeConti
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

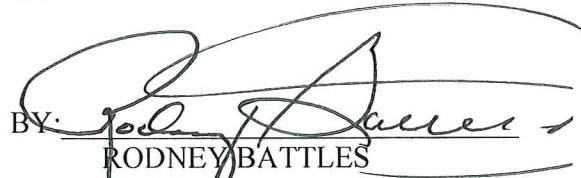
THE STATE OF TENNESSEE

DATED: 2-4-14


BY: 
ROBERT E. COOPER, JR.
Attorney General and Reporter

THE A.I.M. CENTER, INC.

DATED: 2/5/14

BY: 
RODNEY BATTLES
President

DATED: Feb. 5, 2014

BY: 
RICHARD C. ROSE
LEAH M. GERBITZ
Miller & Martin PLLC
Counsel for The A.I.M. Center, Inc.

RELATOR

DATED: 2/4/14

BY: Robert W. Sauser
ROBERT W. SAUSER
Counsel for Relator

DATED: 2/4/14

Dennis Dodson
DENNIS DODSON
Relator