

SETTLEMENT AGREEMENT AND RELEASE

AMONG

**COMPASSIONATE HOMECARE, INC.
and
COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
and
COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL**

PARTIES

This Settlement Agreement and Release (“Agreement”) is entered into among the Massachusetts Executive Office of Health and Human Services (“EOHHS”), limited to its role as the single state agency for Medicaid (“MassHealth”); the Medicaid Fraud Division (“MFD”) of the Commonwealth of Massachusetts Office of the Attorney General (“Attorney General”); and Compassionate Homecare, Inc. (“Compassionate”). Compassionate’s principal place of business was 51 Union Street, Suite 202, Worcester, MA 01608. Together, EOHHS, the Attorney General, and Compassionate will be referred to as “the Parties.”

PREAMBLE

- A. WHEREAS, from at least January 1, 2013 through November 30, 2015, Compassionate, operating under MassHealth provider number 110089462A, was a home health agency that provided home health services to certain MassHealth members.
- B. WHEREAS, MassHealth’s regulations of home health agencies are administered by EOHHS according to the regulations set forth in the Code of Massachusetts Regulations (“C.M.R.”) at 130 C.M.R. § 403.000 *et. seq.* and MassHealth’s administrative and billing regulations are administered by EOHHS under the CMR at 130 C.M.R. § 450.000 *et seq.* These regulations, as well as all applicable state statutes including G.L. c. 12, § 5B, G.L. c. 118E, § 40, set forth the laws, rules, and regulations governing Compassionate’s participation as a MassHealth provider and provision of services to MassHealth members, whether administered by MassHealth or managed care entities.
- C. WHEREAS, MassHealth regulations provide that:
 - 1. “To bill MassHealth for [home health] services, the member’s physician must review and sign a plan of care certifying that home health care services are medically necessary.” *See* 130 C.M.R. § 403.420(A). The plan of care must specify “the service type and frequency of the services to be provided to the member, and the type of professional who must provide them.” 130 C.M.R. § 403.420(B).

2. The plan of care must be signed “no less than every 60 days from the start of home health services,” 130 C.M.R. § 403.420(A)(1)(a), and then recertified via a new signed plan of care “at least every 60 days.” 130 C.M.R. § 403.420(C). The plan of care must be signed “before the home health agency submits its claim for those services to the MassHealth agency for payment” unless the home health agency received verbal orders from a physician. 130 C.M.R. § 403.420(B). If the home health agency received verbal orders from a physician, it is required to document that verbal order in a clinical record and show a physician signature on the plan of care within “45 days after submitting a claim for that period.” 130 C.M.R. § 403.420(D).
3. Pursuant to 130 C.M.R. § 403.419(C)(3)(b), home health agencies are required to maintain “an up-to-date medical record of services provided to each member.” MassHealth also “will not pay a provider for services if the provider does not have adequate documentation to substantiate the provision of services payable under MassHealth.” 130 C.M.R. § 450.205(A). These records must be kept “at least six years after the date of medical services for which claims are made or the date services were prescribed . . .” 130 C.M.R. § 450.205(G).

D. WHEREAS, this Agreement addresses the following “Covered Conduct” for all time up to and including the date of this Agreement:

1. The Attorney General conducted an investigation into the business and billing practices of Compassionate involving MassHealth members for the period January 1, 2013 through November 30, 2015 and filed a lawsuit in Suffolk Superior Court, captioned *Commonwealth v. Compassionate Homecare, Inc.*, Doc. No. 1884CV00702 (hereinafter “the Commonwealth’s enforcement action”);
2. In the Commonwealth’s enforcement action, the Attorney General has alleged that Compassionate was not in compliance with certain laws, regulations, and/or rules governing Compassionate’s participation as a MassHealth provider when operating as a home health agency, resulting in overpayments made to Compassionate by MassHealth. The allegations include, but are not limited to:
 - a. Compassionate knowingly submitted claims to MassHealth for services allegedly provided pursuant to plans of care that were not signed at all by a physician or not signed within 45 days of Compassionate’s submission of claims for those services to MassHealth, which constitutes a violation of G.L. c. 12, § 5B and G.L. c. 118E, §§ 40, 44, an overpayment under 130 C.M.R. §§ 450.237, 450.260(A), 450.260(I), a breach of Compassionate’s MassHealth provider contract, and unjust enrichment; and
 - b. Compassionate knowingly submitted claims to MassHealth for services allegedly provided for which they had not obtained or maintained a signed plan of care at all, which constitutes a violation of G.L. c. 12, § 5B and

G.L. c. 118E, §§ 40, 44, an overpayment under 130 C.M.R. §§ 450.237, 450.260(A), 450.260(I), a breach of Compassionate’s MassHealth provider contract, and unjust enrichment.

- E. WHEREAS, Compassionate filed suit on January 22, 2016 to enjoin MassHealth’s suspension of payments to Compassionate pursuant to a Notice of Withholding Payments dated December 11, 2015 (the “Notice of Withhold”), captioned *Compassionate Homecare Inc. v. MassHealth, Department of Health and Human Services, Division of Medical Assistance*, Doc. No. 1684CV00198 (hereinafter “Compassionate’s civil action”).
- F. WHEREAS, on May 4, 2020 (the “Petition Date”), Compassionate filed a voluntary petition for relief under the provisions of Chapter 11 of the Bankruptcy Code (11 U.S.C. Section 101 *et seq.*) in the United States Bankruptcy Court, District of Massachusetts captioned *In re Compassionate Homecare, Inc.*, Case No. 20-40527-EDK (the “Bankruptcy Case”) and on November 18, 2020, the Bankruptcy Case was converted to a Chapter 7 proceeding.
- G. WHEREAS, on November 18, 2020, Anne J. White was appointed as Chapter 7 Trustee of the Bankruptcy Case and continues to serve in that capacity (hereinafter, the “Bankruptcy Trustee”).
- H. WHEREAS, on January 12, 2021, in the Bankruptcy Case, the Bankruptcy Trustee filed an Application To Employ Special Counsel in which the Trustee sought to employ S. James Boumil, Esq., of 2 Elm Square, Suite 201A, Andover, MA 01810, as special counsel to represent the Bankruptcy Trustee and the bankruptcy estate in both Compassionate’s civil action and the Commonwealth’s enforcement action (the “Application to Employ”).
- I. WHEREAS, the Application to Employ was allowed by the Court on February 3, 2021.
- J. WHEREAS, on January 19, 2021, the Commonwealth of Massachusetts, Executive Office of Health and Human Services, MassHealth filed a proof of claim asserting an indebtedness owed by the Debtor to the Commonwealth in the amount of \$34,215,107.50 (“MassHealth’s Proof of Claim”).
- K. WHEREAS, pursuant to the Notice of Withhold, as of the Petition Date, MassHealth was withholding payments for claims submitted by Compassionate in the amount of \$6,902,753.99 (the “Withheld Funds”).
- L. WHEREAS, MassHealth asserts rightful ownership of the Withheld Funds by reason of applicable law, including applicable non-bankruptcy law.
- M. WHEREAS, by joint pleading, the parties obtained, on March 16, 2021, an order from the Bankruptcy Court granting the parties relief from the automatic stay to proceed with the Commonwealth’s enforcement action and Compassionate’s civil action and seek a resolution of all outstanding issues.

- N. WHEREAS, the Parties wish to avoid the costs and burdens of further litigation proceedings and seek to reach an Agreement that will fully and finally settle the Covered Conduct and any and all related claims, as well as the Bankruptcy Case.

TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree to the following Terms and Conditions:

1. **Full and Final Settlement:** This Agreement is intended to settle and resolve with finality the Covered Conduct. To effectuate such purpose, and in accordance with the mutual covenants and agreements contained herein, and with full authority to enter into this Agreement, the Parties hereby enter into and execute this Agreement and agree to be bound by all of its provisions.
2. **Agreement Effective Upon Signing:** This Agreement shall be final, binding, and effective only upon the signing by each representative party hereto and only upon order of the Bankruptcy Court approving the Settlement Agreement, which order has not been vacated, reversed, stayed, modified, amended, or subject to stay pending appeal (“Effective Date”).
3. **No Admission or Denial of Wrongdoing:** By entering into this agreement, Compassionate neither admits nor denies the allegations identified in the Covered Conduct, and no party shall issue a public statement to the contrary.
4. **Settlement Amount:**
 - a. **Total Settlement Amount:** Compassionate shall pay, as set forth in Paragraph 4.b. below, to the Commonwealth of Massachusetts an amount of \$6,527,753.99 (“Total Settlement Amount”). The payment constitutes restitution, as set forth in 26 U.S.C. § 162(f)(2)(A)(ii), for claims and payments previously paid to Compassionate by MassHealth. The payment, once complete, shall be in full satisfaction of Compassionate’s obligations under and arising out of, and in connection with, the Covered Conduct and this Agreement.
 - b. **Retention or Setoff of Withheld Amount by EOHHS:** The Total Settlement Amount shall be paid in full by recoupment or setoff by EOHHS of the Total Settlement Amount from the Withheld Funds pursuant to the Notice of Withhold sent to Compassionate. EOHHS is authorized to recoup the Total Settlement Amount as of the Effective Date.
 - c. **Disbursement to Compassionate:** Within thirty (30) days of the Effective Date EOHHS shall pay \$375,000.00 (“Disbursement to Compassionate”) to the

Bankruptcy Trustee by check payable to “Anne J. White, Chapter 7 Trustee of Compassionate Homecare, Inc.” EOHHS shall pay the Disbursement to Compassionate from the remainder of the Withheld Funds after the Total Settlement Amount is recouped or set off.

- d. Carve-out: The Disbursement to Compassionate shall constitute a carve-out of sums that otherwise would be retained and/or offset and payable to MassHealth on account of MassHealth’s Proof of Claim and shall be carved out for the benefit of the bankruptcy estate as follows pursuant to 11 U.S.C. § 507:¹ (i) first for the payment of bankruptcy court allowed administrative fees and expenses under § 507(a)(2) (*see* Paragraph 4.e. below) (“Administrative Expenses”); (ii) second, for the payment of bankruptcy court allowed priority wage claims under § 507(a)(4) with all associated wage taxes (*see* Paragraphs 4.f. and 4.g. below) (“Priority Wage Claims”); and (iii) third, for the payment of bankruptcy court allowed pre-petition (wage) tax obligations under § 507(a)(8)² all as to be approved by the bankruptcy court. MassHealth shall have no claim to or against the Disbursement to Compassionate.³
- e. Administrative Expenses in Bankruptcy Case: Pursuant to 11 U.S.C. §§ 503 and 507, the anticipated Administrative Expenses in the Bankruptcy Case will be for special counsel, the Bankruptcy Trustee, general counsel to the Bankruptcy Trustee, accountants employed by the Trustee, and fees owed the United States Trustee’s office⁴ – all of which shall only be allowed following due notice and bankruptcy court approval.
- f. Priority Wage Claims in Bankruptcy Case: The Bankruptcy Trustee has ascertained by an analysis of the proofs of claim in the Bankruptcy Case that (1) one counsel filed a timely Proof of Claim (No. 9) on behalf of multiple employees in a class action for unpaid wages and damages in the amount of \$1,583,333.00 and (2) three other individual employees filed proofs of claim for unpaid wages in the amount of \$25,719.55, yielding aggregate wage claims of \$1,609,052.55. In this connection, the Trustee has further ascertained that pursuant to the pleadings

¹ The Bankruptcy Trustee has ascertained, pursuant to the priority payment requirements set forth in 11 U.S.C. § 507 that, in the Bankruptcy Case there are no first-priority domestic support claims under § 507(a)(1); no third-priority involuntary case claims under § 507(a)(3); and no fifth, sixth, or seventh-priority claims under § 507(a)(5)-(7). The Internal Revenue Service (“IRS”) and the Massachusetts Department of Revenue (“MDOR”) do hold secured and/or eighth-priority claims for wage taxes under § 507(a)(8).

² The IRS duly recorded a tax lien for wage taxes against Compassionate on December 5, 2017 in the amount of \$4,081,617.94. *See*, IRS Proof of Claim No. 3. The MDOR recorded a lien against Compassionate on December 18, 2017 in the amount of \$698,699.51. The MDOR lien is second in position and priority to the tax lien of the IRS.

³ Given the magnitude of the wage claims as detailed herein and associated wage tax claims in this Bankruptcy Case, the Bankruptcy Trustee anticipates that there will be no Settlement Amount available for unsecured creditors in this Bankruptcy Case. If excess funds are available, the Bankruptcy Trustee shall obtain further order approving any such distribution.

⁴ The United States Trustee’s Office filed Proof of Claim No. 10 for administrative fees in the amount of \$325.00.

filed by Compassionate in the Bankruptcy Case, there were approximately 250 wage employees with potential claims in this case.⁵

- g. Bankruptcy Trustee's Obligation Regarding Wage Claims: In order to recompense employees of Compassionate for unpaid wages earned within 180 days of the cessation of Compassionate's operations pursuant to this Agreement and 11 U.S.C. § 507(a)(4), the Bankruptcy Trustee shall file with the Bankruptcy Court a separate pleading requesting the extension of the claims bar date for Compassionate's employees. The Bankruptcy Trustee has ascertained that, for many former employees, their first language is Spanish. Furthermore, many employees may have been uncertain as to the import of the class action suit. Accordingly, the Bankruptcy Trustee shall seek Bankruptcy Court permission to: (1) extend the claims bar date for employees; (2) permit the Bankruptcy Trustee to solicit claims from the wage earners in both English and Spanish; (3) require that employees furnish W-9 forms to the Bankruptcy Trustee to receive an allowed wage claim and wage distributions; and (4) permit the Bankruptcy Trustee to pay all corresponding federal and Commonwealth associated wage taxes for each wage distribution. The Bankruptcy Trustee anticipates filing this separate pleading contemporaneously with the filing of this Agreement.
 - h. Full and Final Settlement: Receipt of the Total Settlement Amount as specified in Paragraph 4.a shall constitute full and final settlement of the Covered Conduct and all alleged overpayments related to the Covered Conduct.
- 5. The Release: In consideration of the execution of this Agreement, the Total Settlement Amount outlined in Paragraph 4, and the Disbursement to Compassionate outlined in Paragraph 4:
 - a. EOHHS and the Attorney General hereby release Compassionate, its predecessors, successors, transferees, heirs, and assigns, and its current and former directors, officers, employees, and agents, individually and collectively, from all civil or administrative claims or causes of action which were or could have been raised in any civil or administrative action or proceeding relating to the Covered Conduct, and from any claims, counterclaims, agreements, contracts, duties, damages, demands, costs, losses, and expenses (including attorneys' fees and litigation costs actually incurred) of any nature whatsoever, in law or in equity, whether statutory or common law, arising in any way from the Covered Conduct, the Attorney General's investigation pertaining to the Covered Conduct, and/or this Agreement.
 - b. The release provided in Paragraph 5.a, "The Release," is limited to civil and administrative liability arising from the Covered Conduct and does not extend to liability arising from any other conduct of Compassionate.

⁵ The Bankruptcy Trustee has ascertained that the total listed wage claims according to Compassionate's bankruptcy pleadings is approximately \$300,000.00.

- c. This Agreement represents a final settlement between the Parties of the Commonwealth's enforcement action and Compassionate's civil action, and it shall not bind any private entity or any state government entity other than EOHHS, limited to its role as the single state agency for Medicaid, and the Attorney General. Nor shall this Agreement bind any federal government entity, including the United States.
- d. Compassionate hereby releases EOHHS and the Attorney General, their successors, assigns, present or former officers, directors, and employees from all civil or administrative liability, and from any claims, counterclaims, agreements, contracts, duties, damages, demands, costs, losses, and expenses (including attorneys' fees and litigation costs actually incurred) of any nature whatsoever, in law or in equity, whether statutory or common law, arising in any way from the Covered Conduct, the Attorney General's investigation pertaining to the Covered Conduct, and/or this Agreement.

6. **Dismissal:**

- a. **Commonwealth's Enforcement Action:** In consideration of the execution of this Agreement, receipt of the Total Settlement Amount outlined in Paragraph 4, and receipt of the Disbursement to Compassionate outlined in Paragraph 4, within 10 days of the Effective Date, the Attorney General shall file a notice of dismissal with prejudice for all claims it asserted in its complaint in the Commonwealth's enforcement action.
 - b. **Compassionate's Civil Action:** In consideration of the execution of this Agreement, receipt of the Total Settlement Amount outlined in Paragraph 4, and receipt of the Disbursement to Compassionate outlined in Paragraph 4, within 10 days of the Effective Date, Compassionate shall file a notice of dismissal with prejudice for all claims it asserted in its complaint in Compassionate's civil action.
7. **No Final Agency Action:** This Agreement is a settlement agreement. It is not a final agency action for the purpose of G.L. c. 30A, §14.
8. **Voluntary and Freely:** The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
9. **Execution of Original Agreement in Counterparts:** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement. Facsimiles and electronic copies of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
10. **Signatories are Authorized to Sign:** Each person who signs this Agreement in a representative capacity warrants that s/he is duly authorized to do so.

11. **Binding on Successors:** This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.
12. **Entire Agreement:** This Agreement constitutes the full and complete agreement between and among the Parties with respect to the subject matters hereof and supersedes any and all other written or oral communications or agreements related thereto.
13. **Governing Law:** This Agreement shall be governed in all respects by the laws of the Commonwealth of Massachusetts.
14. **Modification:** This Agreement may be modified only in a writing signed by or on behalf of all Parties to this Agreement.

COMPASSIONATE HOMECARE, INC.

By:

Anne J. White CH7 Trustee
Anne J. White as Chapter 7 Trustee of Compassionate
Homecare, Inc.
Demeo LLP
66 Long Wharf
Boston, MA 02110

Dated:

2-3-22


By:

S. James Boumil
S. James Boumil, Esq. (Special Counsel for Bankruptcy
Trustee of Compassionate Homecare, Inc.)
Boumil Law
2 Elm Square, Suite 201A
Andover, MA 01810

Dated:

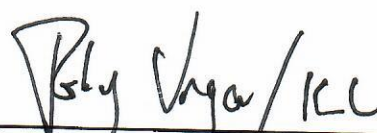
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**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES, OFFICE OF
MEDICAID**

By: 
Secretary Marylou Sudders
Executive Office of Health and Human Services
One Ashburton Place, 11th Floor
Boston, MA 02108

Dated: 5 February 2022

MAURA HEALEY, ATTORNEY GENERAL

By: 
Toby Unger, Chief, MFD
Office of the Attorney General
Commonwealth of Massachusetts
One Ashburton Place, 18th Floor
Boston, MA 02108

Dated: 2/3/22