

SETTLEMENT AGREEMENT

PARTIES

This Settlement Agreement (Agreement) is entered into between the State of Tennessee, acting through the Office of the Attorney General, Janie Ganaway (Ganaway), and Ameri-Kare, Inc. (Ameri-Kare), through its authorized representative. The State of Tennessee, Ganaway, and Ameri-Kare shall be referred to collectively as the Parties.

PREAMBLE

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

A. From January 1, 2016, to December 31, 2020 (the relevant time period), Ameri-Kare and Ganaway submitted or caused to be submitted, claims to Tennessee's Medicaid program (TennCare) for payment, using HCPCS Codes H0034, H0038, H2017, and H0043 to represent that Ameri-Kare had performed certain services for TennCare members. Those services were part of an adult day care program at an Ameri-Kare facility.

B. During the relevant time period, Ganaway was first the Director, and then the CEO of Ameri-Kare. Ganaway was involved in submitting claims for payment to TennCare.

C. The State of Tennessee contends that it has civil claims against Ameri-Kare and Ganaway for violation of the Tennessee Medicaid False Claims Act (TMFCA), Tenn. Code Ann. §§ 71-5-181 to -185 because Ameri-Kare and Ganaway:

- a. Submitted claims to TennCare for services for TennCare members on days when the members were not present;
- b. Submitted claims to TennCare for services supposedly - according to medical records - performed by a physician who no longer performed services at Ameri-Kare;

- c. Submitted claims to TennCare for services performed by a counselor's aide who was not supervised by a physician; and
- d. Altered records to conceal the practice of submitting claims for payment for services when the TennCare member in question was not present.

The conduct alleged in this paragraph C constitutes the Covered Conduct.

D. TennCare suspended all payments to Ameri-Kare in December 2020 based on its determination that Covered Conduct constituted credible allegations of fraud.

E. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of liability by Ameri-Kare or Ganaway, nor a concession by the State of Tennessee that its claims are not well-founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Ganaway and Ameri-Kare agree to pay to the State of Tennessee the total sum of eighty-six thousand, five hundred and ninety-six dollars (\$86,595.96) (Settlement Amount), of which forty-three thousand, two hundred and ninety-eight dollars and fifty cents (\$43,297.98) is restitution, to be paid as follows:

- a. No later than October 15, 2021, Ameri-Kare and Ganaway will make the first of six payments to the State of Tennessee in the amount of fourteen thousand four hundred and thirty-two dollars and sixty-six cents (\$14,432.66) by electronic funds transfer

or ACH transfer. The remaining payments will be made no later than the 15th of each subsequent month, in the same amount (\$14,432.66). All payments will be by electronic funds transfer or ACH transfer.

2. In the event Ameri-Kare and Ganaway fail to pay any amount due under this Agreement within five (5) business days of the date on which such payment is due, they shall be in default of their payment obligations (Default). In the event of Default, the State will provide written notice of the Default to Ameri-Kare and Ganaway, and they shall have the opportunity to cure such Default within thirty (30) days from the date of receipt of the Default notice. Notice of Default will be delivered to Ameri-Kare and Ganaway by U.S. Postal Service Certified Mail to Ameri-Kare, 200 Signature Place, Lebanon, TN 37087. If Ganaway and Ameri-Kare wish to revise this method of notice, they must obtain consent in writing from the State of Tennessee for an alternative method of notice. If Ganaway and Ameri-Kare fail to cure a Default within thirty (30) days of receiving the notice of Default, the State, at its option, may take one or more of the following actions: (a) rescind its releases; (b) declare the full remaining unpaid balance of the Settlement Amount as immediately due; (c) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing to Ganaway or Ameri-Kare by any department, agency, or agent of the State of Tennessee at the time of the Default; (d) file a civil action against Ganaway and/or Ameri-Kare for the Covered Conduct; and (e) exercise any other rights granted by law or in equity, including referral of this matter for private collection, which do not contravene the limitations of this paragraph or other provisions within this Agreement. Ganaway and Ameri-Kare shall pay the State of Tennessee all reasonable costs of collection and enforcement under this Agreement, including attorney's fees and expenses. If, pursuant to this paragraph or paragraph 9, the State of Tennessee elects to rescind its releases and file a civil action against Ganaway and Ameri-Kare for

the Covered Conduct, Ganaway and Ameri-Kare agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the State of Tennessee within 180 calendar days of written notification to Ganaway and Ameri-Kare that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on October 1, 2021. In such civil action, any damages awarded to the State would be off-set by amounts paid by Ganaway and Ameri-Kare pursuant to this agreement, and total damages, including any off-set amount, cannot exceed the Settlement Amount.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Ganaway and Ameri-Kare set forth in this Agreement, and conditioned upon payment in full of the Settlement Amount, the State of Tennessee (on behalf of itself, its officers, and its agencies and departments) hereby releases Ganaway and Ameri-Kare and their respective current agents, representatives, officers, directors, employees, stockholders, and successors, from any civil or administrative monetary claim the State of Tennessee has or may have for the Covered Conduct under the TMFCA or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Notwithstanding any other term of this Agreement, the following claims of the State of Tennessee are specifically reserved and excluded from the scope and terms of this Agreement and are not released by the State of Tennessee:

- a. Any criminal liability;
- b. Any liability to the State of Tennessee for any conduct other than the Covered Conduct;
- c. Any liability based upon obligations created by this Agreement;

d. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Ameri-Kare;

e. Any liability for failure to deliver goods or services due other than within the scope of the Covered Conduct;

f. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from the TennCare program;

g. Any criminal, civil, or administrative liability arising under the State of Tennessee's revenue codes; and

h. Any liability to the State of Tennessee, individual consumers, or state program payors for claims involving unfair and/or deceptive acts or practices and/or violations of consumer protection laws.

5. After Ganaway and Ameri-Kare submit the first settlement payment, TennCare will no longer suspend payments to Ameri-Kare for the Covered Conduct.

6. This Agreement is intended to be for the benefit of the Parties only (except as set forth in paragraph 7), and by this instrument, the Parties do not release any claims against any other person or entity.

7. Ganaway and Ameri-Kare agree to waive and will 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 the Covered Conduct.

8. Ganaway and Ameri-Kare release the State of Tennessee and its agencies, officers, agents, employees, and contractors and their employees from any and all claims, causes of action,

adjustments, and set-offs of any kind (including attorney's fees, costs, and expenses of every kind and however denominated) arising out of or pertaining to the Covered Conduct, including the investigation of the Covered Conduct and this Agreement.

9. Ganaway and Ameri-Kare represent that they have reviewed their financial situations and that to the best of their knowledge they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I). Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Ganaway and Ameri-Kare, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Ganaway and Ameri-Kare were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

10. If within 91 days of the effective date of this Agreement or of any payment made under this Agreement, Ganaway or Ameri-Kare commence, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Ganaway or Ameri-Kare's debts, or seeking to adjudicate Ganaway or Ameri-Kare as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Ganaway or Ameri-Kare or for all or any substantial part of Ganaway's and Ameri-Kare's assets, Ganaway and Ameri-Kare agree as follows:

a. Ganaway's and Ameri-Kare's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Ganaway and Ameri-Kare shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Ganaway and Ameri-Kare's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Ganaway or Ameri-Kare were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the State of Tennessee; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Ganaway and Ameri-Kare.

b. If Ganaway's and Ameri-Kare's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State of Tennessee, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Ganaway and Ameri-Kare for the claims that would otherwise be covered by the releases provided in Paragraph 3 above. Ganaway and Ameri-Kare agree that (i) any such claims, actions, or proceedings brought by the State of Tennessee are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Ganaway and Ameri-Kare shall not argue or otherwise contend that the State of Tennessee's claims, actions, or proceedings are subject to an automatic stay; and (ii) the State of Tennessee has a valid claim against Ganaway and Ameri-Kare in the amount of at least the lesser of \$86,595.96 or the balance due and owing under this Agreement, reasonable costs and at-

torney's fees, and the State of Tennessee may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Ganaway and Ameri-Kare acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

11. Each party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

13. This Agreement is and shall be governed, construed, and enforced in accordance with the laws of the State of Tennessee, and all claims relating to or arising out of this Agreement or the breach thereof, whether sounding in contract, tort, or otherwise, shall likewise be governed by the laws of the State of Tennessee. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Agreement is the Davidson County Circuit Court. 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.

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

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

16. This Agreement is binding on Ameri-Kare's and Ganaway's successors, transferees, heirs, and assigns.

17. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles or scanned images of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

STATE OF TENNESSEE

DATED: 9/14/2021

BY: Herbert H. Slattery III
HERBERT H. SLATTERY III
Attorney General and Reporter

AMERI-KARE, Inc.

DATED: 9/21/2021

BY: Janie Ganaway
Name: JANIE GANAWAY
Title: CEO

JANIE GANAWAY

DATED: 9/21/2021

BY: Janie Ganaway
JANIE GANAWAY

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