

FOR IMMEDIATE RELEASE:

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October 30, 2017

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Attorney General Balderas Announces \$18.5 Million Presbyterian Settlement

Balderas' recovery exceeds the audit amount identified by nearly \$4 million

Albuquerque, NM – This afternoon, New Mexico Attorney General Hector Balderas announced he has reached an \$18.5 million settlement with Presbyterian Healthcare regarding the failure to pay Medicaid premium taxes by the corporation. The settlement exceeds the amount identified, \$14.6 million, in the recently released Examination Resources audit by nearly four million dollars. The \$18.5 million dollar recovery only settles the Attorney General's lawsuit regarding the \$14.6 million identified for Medicaid Premium taxes, the remainder of the \$29 million identified in the Examination Resources audit is still subject to enforcement. This quick settlement will return critical funds owed to the State of New Mexico and greatly assist the state budget at a crucial time.

"This \$18.5 million settlement returns critical funds owed to New Mexico taxpayers at a time of fiscal crisis," said **Attorney General Hector Balderas**. "New Mexicans deserve access to the best healthcare available and at affordable prices, they should not continue to face higher insurance premiums while quality care becomes harder to access. Presbyterian, and all healthcare companies operating in New Mexico, should be focusing on removing barriers for New Mexico families and providing the best care possible, putting people above profits."

Nearly half of New Mexico residents rely on Medicaid for access to healthcare, and all healthcare companies in New Mexico are responsible for paying their fair share of taxes from Medicaid dollars.

Attorney General Balderas continued, “I appreciate Presbyterian’s willingness to do the right thing and pay what they owe through this speedy resolution. Given the corporation’s ambitious future plans, I am optimistic Presbyterian won't repeat its past missteps. However, I will continue to monitor Presbyterian’s compliance with the findings contained in the Examination Resources audit.”

Please see attached for a copy of today’s settlement.

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MUTUAL SETTLEMENT AND RELEASE AGREEMENT

This Mutual Settlement and Release Agreement (the “Agreement”) is entered into as of the Effective Date (as defined herein) by and among: (i) Presbyterian Health Plan, Inc. (“PHP”), (ii) Presbyterian Network, Inc. (“PNI”), (iii) Presbyterian Insurance Company, Inc. (“PIC,” and collectively with PHP and PNI, “Presbyterian”), (iv) the State of New Mexico; (v) Monica Galloway; (vi) Shawna Maestas; and (vii) Jolene Gonzales (Galloway, Maestas and Gonzales collectively “Relators”), as may be referred to collectively herein as the “Parties,” or individually as a “Party.”

RECITALS

WHEREAS, Relators brought an action on behalf of the State of New Mexico for violation of the New Mexico Fraud Against Taxpayers Act, NMSA 1978 §§ 44-9-1 to -14 regarding Presbyterian’s alleged failure to pay the full and correct amount of insurance premium tax related to insurance premiums paid to Presbyterian entitled *State of New Mexico ex rel. Monica Galloway, Shawna Maestas and Jolene Gonzales v. Presbyterian Health Plan, Inc., Presbyterian Network, Inc., and Presbyterian Insurance Co., Inc.*, No. D-101-CV-2016-01596 (N.M. First Judicial District Court) (the “Qui Tam Action”);

WHEREAS, the State of New Mexico, through the New Mexico Attorney General (the “Attorney General”), filed a Complaint in Intervention in the Qui Tam Action (the “Complaint in Intervention”), which also alleged that Presbyterian failed to pay the full and correct amount of premium tax related to health insurance premiums and premium surtax liabilities over a period of years, and asserted claims under the New Mexico Fraud Against Taxpayers Act, the New Mexico Insurance Code, and common law theories of recovery (collectively, the Qui Tam Action and the Complaint in Intervention are referred to in this Agreement as the “Lawsuit”);

WHEREAS, in response to the Lawsuit, Presbyterian denied all allegations and filed a counterclaim for declaratory relief seeking a determination regarding the validity and enforceability of a June 28, 2013 “Stipulated Settlement of Health Insurance Premium Tax and Premium Surtax Liabilities and Withdrawal of Protest,” through which Presbyterian contends that Presbyterian and OSI (as that term is defined in this Agreement) stipulated and agreed that Presbyterian had fully satisfied its health insurance premium tax and premium surtax obligations from the first quarter of 2003 through the last quarter of 2012.

WHEREAS, the State disputes the claim by Presbyterian that the June 28, 2013 “Stipulated Settlement of Health Insurance Premium Tax and Premium Surtax Liabilities and Withdrawal of Protest” is valid and enforceable;

WHEREAS, the claims asserted against Presbyterian by Relators in the Qui Tam Action relate to the claims asserted against Presbyterian by the State of New Mexico in its Complaint in Intervention;

WHEREAS, Presbyterian denies all claims brought by both Relators and the State of New Mexico in the Lawsuit;

WHEREAS, the Parties engaged in good-faith settlement discussions to resolve their disputes;

WHEREAS, the Parties recognize that further litigation concerning claims asserted by each Party in the Lawsuit will be time-consuming and expensive, and that the outcome of the Parties’ claims and defenses is uncertain;

WHEREAS, without any admission by any Party as to the strength or weakness of any claims or defenses, and without any admission of fact or liability, the Parties desire

to settle any and all disputes between them relating to the Lawsuit, and to reach a resolution that all Parties believe is in their respective best interests and the best interest of the residents of the State of New Mexico;

WHEREAS, Presbyterian will not agree to settle any of the claims in the absence of a settlement that finally and conclusively resolves, subject to the limitations set forth in this Agreement with respect to findings contained in or related to the Examination Report other than the 2003-2004 Medicaid Premium Tax and Premium Tax Credits (as such terms are defined in this Agreement), (i) all claims that have been or could have been asserted by or on behalf of the State of New Mexico or Relators in their respective complaints filed in the Lawsuit, including dismissal with prejudice of all claims brought against it in the Lawsuit, and (ii) Presbyterian's obligations relating to the 2003-2004 Medicaid Premium Tax and Premium Tax Credits (as such terms are defined in this Agreement);

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

1. Definitions.

a. "Presbyterian" means collectively:

- (i) PHP, PNI and PIC,
- (ii) all related, subsidiary and affiliated companies of PHP, PNI and PIC,
- (iii) all predecessors in interest, successors and assigns of PHP, PNI and

PIC, and

(iv) all current and former officers, directors, employees, agents (past, present actual, ostensible and borrowed), heirs, executors, administrators, and managers of PHP, PNI and PIC.

b. "Relators" means collectively:

- (i) Monica Galloway, Shawna Maestas and Jolene Gonzales, and
- (ii) the respective heirs, assigns, executors, administrators, successors-in-interest, and any and all other persons or entities claiming through or under Monica Galloway, Shawna Maestas and Jolene Gonzales.

c. "State" means:

- (i) the State of New Mexico,
- (ii) all Departments, Bureaus, Divisions, Agencies, Offices, Sections created by or operating under or on behalf of the State of New Mexico, including without limitation the OSI and OSA (as such terms are defined herein), and
- (iii) all current and former elected or appointed officers, directors, officials, employees, agents (past, present, actual, ostensible, and borrowed) of the State of New Mexico, including without limitation the Superintendent and the State Auditor (as such terms are defined in this Agreement).

d. "OSA" means the New Mexico Office of the State Auditor.

e. "OSI" means the New Mexico Office of the Superintendent of Insurance and its predecessor agency, the Department of Insurance of the New Mexico Public Regulation Commission.

f. "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, affiliate, joint stock

company, government and any political subdivision thereof, legal representative, trust, trustee, unincorporated association or any business or legal entity.

g. “Released Claims” means any and all claims, lawsuits, causes of action, complaints, charges, demands, obligations, damages, losses, and liabilities of any type whatsoever (including punitive, exemplary, double or treble damages, fines, penalties, costs and expenses, and attorneys’ fees), at law or in equity, under federal, state or common law, whether accrued or unaccrued, absolute or contingent, realized or unrealized, and whether known or unknown, suspected to exist or unsuspected to exist, that the State, or Relators, or any Person seeking to enforce the rights of any of them or claiming injury through any of them, either in an individual or representative capacity, has or had arising out of or relating to (i) any matters asserted, or that could have been asserted, against Presbyterian by or on behalf of the State of New Mexico or Relators in the Lawsuit, and (ii) the 2003-2004 Medicaid Premium Tax and Premium Tax Credits (as such terms are defined in this Agreement. The term “Released Claims” specifically does not include the findings contained in or related to the Examination Report except as specifically set forth in paragraph 4 of this Agreement.

h. “State Auditor” means the State Auditor of New Mexico.

i. “Superintendent” means the Superintendent of Insurance of New Mexico.

j. “Examination Report” means the examination report and/or target examination report of Presbyterian, and any findings or determinations related thereto, issued by Examination Resources, OSI and/or OSA pursuant to the 2017 Premium Tax Audit for the period 2003-2016 requested by OSI pursuant to the Request for Proposal (RFP# 17-440-1000-00021) (RFP release date, January 8, 2017).

k. "2003-2004 Medicaid Premium Tax and Premium Tax Credits" means the amount of \$15,306,932.00 which is comprised of: (i) the premium tax credit of \$14,831,722.00 claimed by Presbyterian on its 2004 amended tax return for Medicaid insurance premiums received during the period beginning March 21, 2003 through June 30, 2004, plus (ii) premium tax credits for premiums attributable to insurance purchased by political subdivisions (tribal governments) during the period beginning 2001 through 2004 in the aggregate amount of \$475,210.00, which amounts were offset against the \$15,306,932.00 resulting in the carryforward credit of \$14,831,722.00 claimed by Presbyterian on its amended 2004 income tax return.

2. Payment Amount.

On the Effective Date, Presbyterian shall wire to its legal counsel, the Rodey Law Firm, the amount of Eighteen Million, Five Hundred Thousand and no/100 Dollars (\$18,500,000.00) (the "Payment Amount") to be held by the Rodey Law Firm in its client trust account until filing of the stipulation of dismissal with prejudice provided in paragraph 3(a) of this Agreement.

Presbyterian shall have no obligation to make any other payment to or on behalf of the State or Relators under this Agreement, including, without limitation, a Relators' share of the Payment Amount pursuant to NMSA 1978, Section 44-9-7, or any other entitlement, or to any Persons acting or purporting to act or to assert claims on behalf of any of them, or to any of their attorneys for any purpose whatsoever, including, without limitation, for any costs, expenses or attorneys' fees of any of Relators or their counsel, which amounts, if they are awarded, shall be the sole responsibility of the State, and the

State agrees to have sole responsibility for the defense and payment of any such claim for fees and/or other amounts.

3. Procedure for Seeking Dismissal of the Lawsuit.

a. No later than one business day following the Effective Date of this Agreement, (i) the State and Presbyterian shall file a stipulation of dismissal with prejudice of Counts I, IV, V, and VI of the Complaint in Intervention pursuant to Rule 1-041(A)(1)(b) NMRA, and (ii) Relators and Presbyterian shall file a stipulation of dismissal with prejudice of the first amended complaint filed in the Qui Tam Action pursuant to Rule 1-041(A)(1)(b) NMRA;

b. No later than one business day following the filing of the stipulations of dismissal referenced in paragraph 3(a) above, the Rodey Law Firm shall wire the Payment Amount to an account of the State pursuant to wire transfer instructions delivered by the State to Presbyterian and the Rodey Law Firm on the Effective Date; and

c. Immediately following the wire transfer of the Payment Amount to the State, the State and Presbyterian shall file a stipulation of dismissal with prejudice of Counts II and III of the Complaint in Intervention and the counterclaim filed by Presbyterian in the Lawsuit pursuant to Rule 1-041(A)(1)(b) NMRA.

4. Release.

As of the filing of the final stipulations of dismissal as provided in paragraph 3(c) of this Agreement, and without requiring further action by any Party, the State and Relators release and forever discharge Presbyterian from all Released Claims. It is the express intention of the Parties that, other than the Payment Amount, Presbyterian shall not make any additional or other payments based on any of the claims or damages

asserted by or on behalf of the State of New Mexico or Relators in the Lawsuit. The State and Presbyterian further stipulate and agree that the Payment Amount releases and satisfies in full Presbyterian's obligations with respect to the 2003-2004 Medicaid Premium Tax and Premium Tax Credits and shall fully discharge this liability if hereafter included within or as part of the findings in the Examination Report (including, for avoidance of doubt, those amounts set forth in the Examination Report for "Erroneous Political Subdivisions" (Finding 2017-002) and "Erroneously Applied Overpayment Credits" (Finding 2017-007)). Notwithstanding the foregoing, except for the 2003-2004 Medicaid Premium Tax and Premium Tax Credits, this Agreement does not impact or settle any other any rights or obligations of the OSI or Presbyterian based on other findings and conclusions set forth in the Examination Report.

5. Relators' Rights.

In accordance with New Mexico law, Relators' share of recovery in the Lawsuit shall be twenty percent (20%) of the Payment Amount. The Relators' recovery shall be paid solely by the State, and Presbyterian shall have no liability for any payments of any amounts to the Relators.

6. Jurisdiction.

The Parties irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of New Mexico sitting in the County of Santa Fe (as well as all appropriate appellate courts) for any actions arising out of or relating to this Agreement (and the Parties agree not to commence any action arising out of or relating to this Agreement except in such courts).

7. Governing Law.

Except for issues or matters as to which federal law is applicable, this Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of New Mexico without giving effect to the conflicts of law principles thereof.

8. No Other Agreements or Obligations.

This Agreement supersedes all prior or contemporaneous negotiations, commitments, agreements and writings of any sort between the Parties with respect to its subject matter. There are no other promises, representations, obligations or understandings between the Parties.

Furthermore, this Agreement is intended fully and forever to settle, compromise and discharge any rights or obligations arising out of any prior dealings between the Parties concerning the subject matter of this Agreement, the subject matter of the Lawsuit, and of the Released Claims.

The State and Relators expressly understand and agree that the proper division and/or waiver of the Payment Amount among and between themselves and their respective counsel is the sole concern of the State, Relators and their respective counsel, and in no way shall affect the validity of this Agreement.

9. No Admission.

Nothing in this Agreement is intended to be or should be construed as an admission by any Party as to the existence, viability, strength or weakness of any claim or defense; as to the existence of any duties or agreements; or as to any wrongdoing.

The liability for all claims asserted against Presbyterian is denied, and this final compromise and settlement of such claims never shall be treated by the State, Relators, or any Person at any time for any purpose as an admission or evidence of liability or

responsibility on the part of Presbyterian, which expressly denies any liability or responsibility. Similarly, this final compromise and settlement shall never be treated by Presbyterian as an admission on the part of the State or Relators as to the validity of Presbyterian's counterclaim or defenses.

10. Public Statements.

Any public statement made or released by any of the Parties concerning this Agreement shall describe this settlement as a compromise of disputed claims. Neither the State nor the Relators shall use the term fraud to characterize Presbyterian or its actions or inactions in any public statement or in any form of media, including any social media.

11. Construction.

This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of them. This Agreement is in all respects the result of arm's-length negotiations between the Parties, and that all of them have been advised by counsel of their own choice and have contributed substantially and materially to its preparation.

12. Severability.

Each provision of this Agreement is severable, and if one or more provisions are declared invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect, except that the Payment Amount (Paragraph 2 above) is not severable from Dismissal and Release (Paragraphs 3 and 4 above).

13. No Oral Modifications.

The Parties may not modify, amend, or waive the terms of this Agreement other than by a written instrument signed by the Parties.

14. Authority.

Each of the Parties has the requisite authority and capacity to execute, deliver and perform this Agreement, and this Agreement has been duly and properly approved and authorized by whatever officer(s), official(s), director(s), board(s), trustee(s) or other persons or bodies have the power to grant such approval and authorization on behalf of such Party. Each Party represents and warrants that this Agreement, when executed by such Party, will be binding upon such Party without the approval of any court being required.

The New Mexico Attorney General expressly represents and warrants that he has full power and authority to bind OSI, the Superintendent, OSA, and the State Auditor to the terms, conditions and requirements of this Agreement.

15. Further Action.

The Parties shall take all steps reasonably necessary to effectuate this Agreement.

16. Successors/Assigns.

This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective heirs, assigns, successors in interest, and any and all other persons or entities claiming through or under the Parties.

17. Headings.

The captions and headings contained in this Agreement are for convenience only and shall not be construed as a part of the Agreement.

18. Counterparts/Electronic Signatures.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signature pages transmitted by facsimile, e-mail, or other electronic means shall be valid for all purposes.

19. Effective Date.

Time is of the essence for this Agreement. This Agreement shall be effective as of the date of the last signature of each Party to this Agreement (the "Effective Date") and shall be void if not executed by all Parties on or before October 27, 2017.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

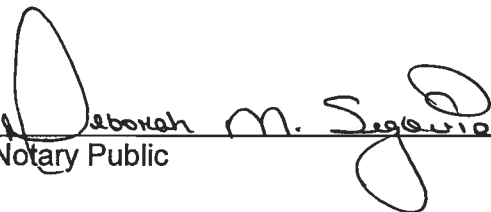
STATE OF NEW MEXICO

By: 
Name: Sean Conniff
Title: Assistant Attorney General

STATE OF NEW MEXICO)
)
COUNTY OF SANTA FE) ss.

The foregoing instrument was acknowledged before me this 27 day of October, 2017, by Sean Conniff.




Notary Public

PRESBYTERIAN HEALTH PLAN, INC.

By: [Signature]
Name: Brandon Fryar
Title: President

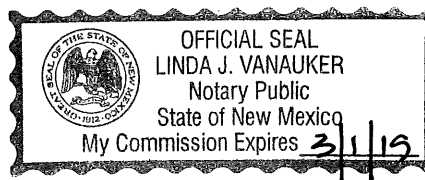
STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO) ss.

The foregoing instrument was acknowledged before me this 27th day of October, 2017, by Brandon Fryar.

[Signature]
Notary Public

My commission expires:

Mar. 1, 2019



PRESBYTERIAN NETWORK, INC.

By: Dale Maxwell
Name: Dale Maxwell
Title: President

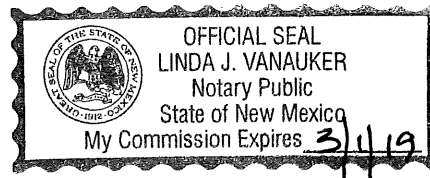
STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO) ss.

The foregoing instrument was acknowledged before me this 27th day of October, 2017, by Dale Maxwell.

Linda J. Van Auker
Notary Public

My commission expires:

Mar. 1, 2019



PRESBYTERIAN INSURANCE COMPANY, INC.

By: [Signature]
Name: Brandon Fryar
Title: President

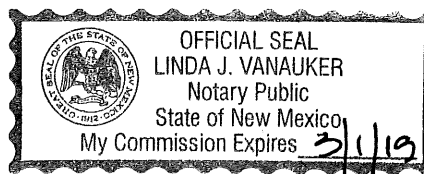
STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO) ss.

The foregoing instrument was acknowledged before me this 27th day of October, 2017, by Brandon Fryar.

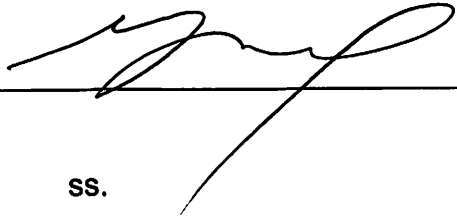
[Signature]
Notary Public

My commission expires:

Mar. 1, 2019



MONICA GALLOWAY



)
) ss.
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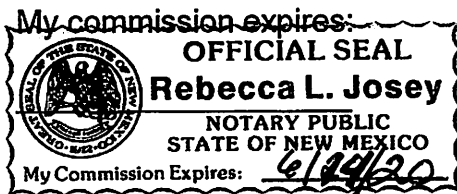
STATE OF NEW MEXICO

COUNTY OF SANTA FE


The foregoing instrument was acknowledged before me this 27th day of October, 2017,
by MONICA GALLOWAY



Notary Public



SHAWNA MAESTAS

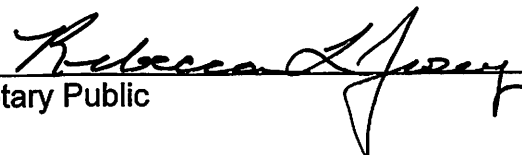


STATE OF NEW MEXICO

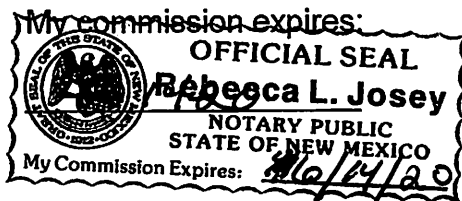
COUNTY OF SANTA FE

)
) ss.
)

The foregoing instrument was acknowledged before me this 27th day of October, 2017,
by SHAWNA MAESTAS



Notary Public



JOLENE GONZALES



STATE OF NEW MEXICO

)

ss.

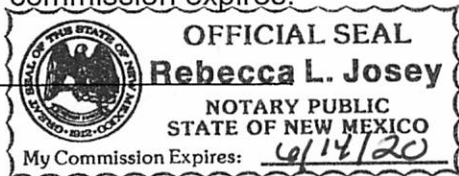
COUNTY OF SANTA FE

)

The foregoing instrument was acknowledged before me this 27th day of October, 2017,
by Jolene Gonzales


Notary Public

My commission expires:

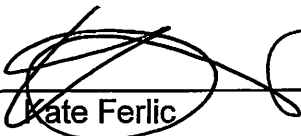



Sean Cunniff
Assistant Attorney General

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By _____
Andrew G. Schultz

EGOLF + FERLIC + HARWOOD, LLC

By _____

Kate Ferlic


Sean Cunniff
Assistant Attorney General

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

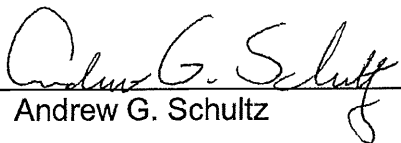
By _____
Andrew G. Schultz

EGOLF + FERLIC + HARWOOD, LLC

By _____
Kate Ferlic

Sean Cunniff
Assistant Attorney General

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By 
Andrew G. Schultz

EGOLF + FERLIC + HARWOOD, LLC

By _____
Kate Ferlic