TERM SHEET FOR SETTLEMENT OF CERTAIN MEDICAID RATE-RELATED APPEALS & LITIGATION DECEMBER 19 , 2014

WHEREAS, the Nursing Home Facilities located in New York State (the "Facilities) have, indirectly through their associations and/or directly on their own behalf, enjoyed a mutually beneficial longstanding cooperative business relationship with the Department of Health ("DOH"), the Division of Budget ("DOB") and the Office of the Medicaid Inspector General ("OMIG") (collectively, the "State");

WHEREAS, the Facilities currently have pending rate appeals and pending litigation that constitute a considerable burden and risk for both the Facilities and the State to perpetuate;

WHEREAS, effective January 1, 2012, New York State's reimbursement methodology evolved into a different statewide pricing methodology implemented by subdivision 2-c of section 2808of the Public Health Law;

WHEREAS, the Facilities and the State have participated in full discussion and good faith negotiations to eliminate their respective aforementioned burdens and risks; and collectively seek to move forward into the new statewide pricing methodology as seamlessly, efficiently and productively as possible without potential disruption by pending rate appeals and pending litigation concerning the prior reimbursement methodology;

WHEREAS, the Facilities desire to cease, through this Settlement Agreement, (i) pending rate appeals and pending litigation that dispute or contest all aspects of the prior reimbursement methodology, unless specifically excluded as set forth in this Settlement Agreement, and (ii) certain other matters as described in Section 1, including the introductory paragraph set forth in Section 1 and all of its enumerated subparagraphs;

WHEREAS, the State desires, in exchange for the cessation of the Facilities' pending rate appeals and pending litigation that dispute or contest all aspects of the prior reimbursement methodology, unless specifically excluded as set forth in this Settlement Agreement, to settle any claims or counter claims it may have against the Facilities relating to the prior reimbursement methodology, unless specifically excluded as set forth in this Settlement Agreement, and to pay to the Facilities' current and former owners, as appropriate, $850 million, less any recoupments and all amounts allocated to any proposed Distributee that does not participate in the Settlement Agreement, as such sum is allocated among the Nursing Home Facilities themselves, over FY 2014-2015 through 2018-2019, provided that this Settlement Agreement is universally accepted by all Facilities;

WHEREAS, the State agrees to continue working in good faith to implement this Settlement Agreement consistent with the express terms set forth herein; and

WHEREAS, the Facilities agree to continue working in good faith to implement this Settlement Agreement consistent with the express terms set forth herein.

NOW, THEREFORE, the State of New York, and the Facilities, including current and former owners of the Facilities (collectively, the "Distributees") desire that the following terms shall form the basis of a settlement agreement to be approved by the parties (the "Settlement Agreement"):

1. **Claims, Appeals, and Litigation:** Except as expressly excluded herein, the Distributees, in exchange for the payments described below, shall withdraw, discontinue and release with prejudice any known or unknown claims, rate appeals or litigation brought: (i) or could be brought on or before the effective date of the Settlement Agreement (defined as the date that DOH affixes its signature to the Settlement Agreement); or (ii) could be brought after the effective date of the Settlement Agreement, by any Distributee, relating to:

   1.1 Any Medicaid reimbursement rates and/or any reimbursement methodology utilized for Facilities for rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law, regardless of whether such claim, appeal or litigation: (i) was filed prior or subsequent to January 1, 2012; (ii) did, or may have resulted in a favorable decision for the Facility, former or current owner or the State; or (iii) would or may have resulted in adjustments in favor of a Facility, former owner, current owner and/or the State; and

   1.2 **(i)** Wage Equalization Factor claims by Facilities, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims by Facilities, in connection with any Medicaid rate reimbursement methodology;

   (ii) Case Mix adjustments claims by Facilities related to rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;

   (iii) Rebasing issues, including hold harmless claims and the $210 million scale back;

   (iv) DOH being compelled to consider a rate appeal under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law prior to the date of the last installment payment made under section 6 herein; and

   (v) Notwithstanding subparagraphs (i) through (iv) of this Section, the State will correct computational errors for the issues identified in those subparagraphs. Computational errors shall mean solely errors in mathematical operations. Computational errors shall not include alleged errors such as the inclusion of reserved bed days in the definition of patient days, the classification of regions by counties, or any other alleged error pertaining to judgment, classification, or data usage; and

   1.3. The Medicaid Global Cap, as such term is defined in sections 91 and 92 of Part H of chapter 59 of the laws of 2011, as amended.

2. Payments

2.1 Amount:

(i) Contingent upon the complete satisfaction of all other terms set forth herein, the State shall pay to eligible Distributees or the Distributee's designated professional, subject to Appropriation, Assessment and Recoupment, up to a total of $170 million in funds annually per State fiscal year for 5 fiscal years commencing with State Fiscal Year (FY) 2014-15 as set forth in Section 6 of this Settlement Agreement.

(ii) The total amount of funds eligible for payment under the Settlement Agreement over the 5 year period shall be $850 million, less: (a) any recoupments; and (b) all amounts allocated to any proposed Distributee that does not participate in the Settlement Agreement.

2.2 Source of Funds: The funds distributed (not to exceed a total of $850 million) shall be derived annually in each of State FYs 2014-15, 2015-16, 2016-17 and 2017-18 (and if necessary in accordance with the Distribution Schedule below, 2018-19) from the following sources:

(i) $50 million in resources otherwise set aside for litigation;

(ii) $50 million in resources set aside under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law, otherwise known as the "appeals cap"; and

(iii) $70 million in resources collected from a portion of the payments made by the nursing home industry as an alternative method of cost containment authorized by section 38 of Part C of chapter 60 of the laws of 2014.

2.3 Amount Allocated to Each Facility: Allocations of payments to the Distributees or the Distributee's designated professional shall be made pursuant to a schedule agreed to by the Distributees and the State, and attached hereto as Exhibit 1.

2.4 Form of Payment:

(i) Payments to Distributees that provide Releases acceptable to the State and satisfy all other terms set forth herein, shall be in the form of lump sum "offline" payments ("lump sum payments"), separate and discrete from any other Medicaid reimbursement payments, including Fee-For-Service rates.

(ii) Such lump sum payments shall be made directly to the Distributee or the Distributee's designated professional over a five fiscal year period as described below, subject to Appropriation, Assessment and Recoupment.

(iii) Such lump sum payments shall not be included in any benchmark rates calculated for the purposes of Managed Care rates.

3. Appropriation:

3.1 The obligations of the State under the Settlement Agreement shall not constitute a debt of the State within the meaning of the New York State Constitution or any New York statute, and may only be undertaken by the State using funds that have been appropriated for such purpose or otherwise lawfully available as set forth in Section 41 of the State Finance Law.

3.2 The State, through the Governor, agrees to propose an appropriation in order to fulfill the obligations of the State under the Settlement Agreement in the Executive Budget each year during the term of the Settlement Agreement commencing with State Fiscal Year 2015-16 in an amount sufficient to meet its obligations under the Settlement Agreement, and will use best efforts to obtain legislative approval.

4. Recoupment:

4.1 The State has provided the Distributees with a list of all debts that are claimed to be owed to the State by any Distributee as of December 1, 2014, and the State will provide the Distributees with a list of net payments to be made to each Distributee with respect to the installment referred to in Section 6.1(i) and (ii) below (both such lists are attached hereto as Exhibit 2).

4.2 At the State's discretion, up to 70% of the distribution to a Distributee for FY 2014-2015 pursuant to Section 6.1 shall be offset by amounts owed to the State by such Distributee, as such amounts are set forth in Exhibit 2 attached hereto. All other distributions to Distributees in the four remaining installments shall be offset by the amounts owed by the Distributees to the State as of the date the installment is paid.

4.3 Before offsetting any installment payment under the Settlement Agreement, the State shall first reduce amounts owed by a Distributee through such Distributee's Medicaid rates; provided that, any remaining balance may be recouped by the State from payments made under the Settlement Agreement at the percentage identified herein, or by an alternative percentage agreed to by the parties, through a debt repayment plan.

4.4 A Distributee may submit a debt repayment plan to reduce the amount of recoupment by the State; provided, however, the State shall have sole discretion to approve, reject or modify such a plan.

4.5 In all instances, the foregoing shall be without prejudice to the State's collection of the balance of any monies owed to the State by any Distributee, where such recoupment of settlement payments is not in full satisfaction of all monies owed to the State by such Distributee.

4.6 Subject to any applicable statute of limitations, the foregoing is without prejudice to the Distributee's right to contest the validity and basis of the State's recoupment from distributions in those four remaining installment payments.

4.7 The State shall not offset any liabilities incurred by a new owner of a Facility against a former owner Distributee that held a former provider number for the Facility.

4.8 Where the Distributee disputes or contests any item on the list of debts referred to in Section 4.1 above and/or any other debt not appearing on that list that the State claims to be owed in the future, that Distributee may, consistent with current practice, contact the State and attempt to resolve the dispute or contest. The State agrees to attempt to resolve the dispute or contest in good faith.

5. **Cash Assessments:** Payments made by the State to current owner Distributees shall be counted as revenues prior to any recoupment or offset from the Facility and shall be subject to the cash assessment of section 2807-d of the Public Health Law; provided, however, that any payments made by the State to former owner Distributees, or made to the designated professionals of such former owner Distributees, shall not be subject to such assessment.

6. **Distribution Schedule**:

6.1 Such payments shall be distributed in five installments, representing the calendar years 2013-2017. Such installments shall be paid according to the following schedule, subject to Appropriation, Assessment and Recoupment, and as necessary to preserve the integrity of the Medicaid Global Cap as described herein:

(i) Up to $170 million for calendar year 2013 shall be paid in the fourth quarter of the State FY 2014-15, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap.

(ii) Up to $170 million for calendar year 2014 shall be paid in the fourth quarter of the State FY 2014-15, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap; provided, however, that such payment may be delayed at the State's discretion until the end of FY 2015-16.

(iii) Up to $170 million for calendar year 2015 shall be paid in the fourth quarter of the State FY 2015-16 fiscal year, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap; provided, however, that such payment may be delayed at the State's discretion until the end of FY 2016-17.

(iv) Up to $170 million for calendar year 2016 shall be paid in the fourth quarter of the State FY 2016-17, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap; provided, however, that such payment may be delayed at the State's discretion until the end of FY 2017-18.

(v) Up to $170 million for calendar year 2017 shall be paid in the fourth quarter of the State FY 2017-18 fiscal year, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap; provided, however, that such payment may be delayed at the State's discretion until the end of FY 2018-19.

6.2 Payments shall be made to Distributees pursuant to the annual schedule, including deferrals to the next succeeding year, described in section 6.1 herein, and such payments when made shall fall within the "Medicaid Global Cap," as such term is described in sections 91 and 92 of part H of chapter 59 of the laws of 2011, as amended.

7. **Equity Withdrawals:** Equity withdrawals on payments made pursuant to the Settlement Agreement shall be permissible only in accordance with subdivision 5 of section 2808 of the Public Health Law and subject to the DOH's approval.

8. **Excluded Rate Appeals:** The following categories of rate appeals shall be excluded from the Settlement Agreement:

8.1 A Facility's Adult Day Health Care Medicaid rate appeals.

8.2 A Facility's Medicaid rate appeals for the initial processing of 12 month cost reports for eligible rebasings.

8.3 Appeals of the capital component of a Facility's Medicaid reimbursement rate covering rate periods from and after calendar year 2012.

8.4 Appeals of the capital component of a Facility's Medicaid reimbursement rate covering rate periods from and before calendar year 2011 related to:

(i) Changes in bed capacity

(ii) Changes in ownership

(iii) Interim and Approved Project Costs

(iv) MATPs

(v) New Facilities

(vi) Refinancings

8.5 A Facility's cash receipts assessment reconciliations.

8.6 Initial Medicaid rate appeals related to the consolidation of Facilities.

8.7 Negotiated Medicaid rate settlements signed by a Distributee and DOH prior to the effective date of the Settlement Agreement but awaiting, as of the effective date of the Settlement Agreement, OMIG and/or DOB approval that are set forth in a schedule approved by the State Parties and attached to the Settlement Agreement.

8.8 A Facility's Medicaid rate appeals for initial base year operations.

8.9 A Facility's Medicaid rate appeals related to dropped services.

8.10 Medicaid rate appeals brought by Specialty Facilities, as such Facility is described under subdivision 2-c of section 2808 of the Public Health Law, and discretely reimbursed specialty units within Facilities subject to such subdivision of such section.

8.11 Medicaid rate appeals filed by any Facility subsequent to January 1, 2012 that challenge the rates established pursuant to subdivision 2-c of section 2808 of the Public Health Law, otherwise known as the statewide pricing methodology with the exception of any rate appeals filed by any Facility related to:

(i) Wage Equalization Factor claims by Facilities, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims by Facilities, in connection with any Medicaid rate reimbursement methodology;

(ii) Case Mix adjustments claims by Facilities related to rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;

(iii) Rebasing issues, including hold harmless claims and the $210 million scale back; and

(iv) Notwithstanding subparagraphs (i) through (iii) of this Section, the State will correct computational errors for the issues identified in those subparagraphs. Computational errors shall mean solely errors in mathematical operations. Computational errors shall not include alleged errors such as the inclusion of reserved bed days in the definition of patient days, the classification of regions by counties, or any other alleged error pertaining to judgment, classification, or data usage; and

9. **Excluded Litigation:** The following categories of litigation shall be excluded from the Settlement Agreement:

9.1 Medicaid rate litigation and the settlement thereof associated with the base price reduction adjustment, including, but not limited to, those actions commenced in the County Court of Albany County with such Index Numbers as identified by Exhibit 3, attached hereto.

9.2 Litigation filed by Facilities subsequent to January 1, 2012 that challenge the rates established pursuant to subdivision 2-c of section 2808 of the Public Health Law, otherwise known as the statewide pricing methodology, with the exception of any litigation by Facilities related to:

(i) Wage Equalization Factor claims, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims related to any pricing methodology;

(ii) Case Mix adjustments claims by Facilities related to rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;

(iii) Rebasing issues, including hold harmless claims and the $210 million scale back;

(iv) DOH being compelled to consider a rate appeal under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law prior to the date of the last installment payment made under section 6 herein;

(v) The Medicaid Global Cap, as such term is defined in sections 91 and 92 of Part H of chapter 59 of the laws of 2011, as amended;

(vi) Notwithstanding subparagraphs (i) through (v) of this Section, the State will correct computational errors for the issues identified in those subparagraphs. Computational errors shall mean solely errors in mathematical operations. Computational errors shall not include alleged errors such as the inclusion of reserved bed days in the definition of patient days, the classification of regions by counties, or any other alleged error pertaining to judgment, classification, or data usage.

9.3 Litigation brought by Specialty Facilities, as such Facility is described under subdivision 2-c of section 2808 of the Public Health Law and discretely reimbursed specialty units within Facilities subject to such subdivision of such section.

10. Process for Determining Excluded Rate Appeals and Litigation:

10.1 The State has provided the Distributees with a list of open rate appeals.

10.2 The Distributees shall identify, as of the effective date of the Settlement Agreement, any existing claims, rate appeals and litigation, including specifically identified claims or causes of action within each litigation, to be excluded from the Settlement Agreement. If the Distributees have other rate appeals they believe are "excluded" but are not identified on the list provided by the State, the Distributees shall add them to the list. Any existing claim, rate appeal or litigation, including specifically identified claims or causes of action within each litigation, that is not identified as "excluded" by the Distributee shall automatically be deemed withdrawn, discontinued and released with prejudice pursuant to the Settlement Agreement.

10.3 Claims, rate appeals and litigation, including specifically identified claims or causes of action within each litigation, believed by such Distributee to be excluded from the Settlement Agreement, shall be identified by index or rate appeal number, as applicable, claim and issue to be excluded, and the corresponding category of exclusion that applies to such claim, rate appeal or litigation, including specifically identified claims or causes of action within each litigation.

10.4 All claims, rate appeals or litigation placed on the list by any Distributee shall be deemed by the State, in its sole discretion, to either be excluded or included within the Settlement Agreement prior to its execution. The State agrees that if a Facility or its designee has a good faith concern relating to the inclusion or exclusion of any claim, rate appeal or litigation matter, it may contact the State in order to attempt to resolve the dispute. The State agrees to attempt to resolve the dispute in good faith, but will retain sole discretion as to what claims, rate appeals, or litigation is excluded.

10.5 Where a Facility has not asserted or filed a claim, rate appeal, or litigation matter related to the matters identified Section 1.2 as of the effective date of the Settlement Agreement, the Facility may, consistent with current practice, contact the State prior to the effective date of the Settlement Agreement and raise an issue related to those matters that the Facility is concerned about. The State agrees to attempt to resolve that issue in good faith but that issue shall continue to be deemed withdrawn, discontinued and released with prejudice pursuant to the Settlement Agreement.

11. Office of Medicaid Inspector General ("OMIG"):

11.1 OMIG will be a party to the Settlement Agreement.

11.2 OMIG will not commence any review, investigation, or audit of any matter that is being withdrawn, discontinued and released with prejudice under this Settlement Agreement.

11.3 OMIG will discontinue any current review, investigation or audit of any matter that is being withdrawn, discontinued and released with prejudice under this Settlement Agreement.

11.4 OMIG reserves the right to:

(i) Review, investigate and/or audit any of the categories of rate appeals or litigation excluded from Sections 8 and 9 of the Settlement Agreement, respectively.

(ii) Review, investigate and/or audit fraud and abuse, as those terms are defined in applicable laws, rules and regulations, even if within any of the categories of rate appeal or litigation identified in Sections 11.2 or 11.3 above.

(iii) Pursuant to 42 CFR 455.23, review, investigate and/or audit and make referrals relating to a credible allegation of fraud as that term is defined in 42 CFR 455.23, even if within one of the categories of rate appeals or litigation identified in Sections 11.2 or 11.3 above.

(iv) Commence any review, investigation or audit of any other matter that is not being withdrawn, discontinued and released with prejudice under this Settlement Agreement.

(v) Continue any review, investigation or audit of any other matter that is not being withdrawn, discontinued and released with prejudice under this Settlement Agreement.

11.5 With respect to reviews, investigations, and audits conducted by OMIG that are consistent with Section 11.4 above, the Facilities shall retain all statutory and regulatory rights and defenses, including, but not limited to, the right to contest, appeal and litigate the results of any such audits, and to commence any appeal that may be raised pursuant to 10 NYCRR 86-2.13(b), provided, however, that any relief shall not exceed any liability arising from such audit, and OMIG shall retain any and all statutory and regulatory rights and defenses.

12. **Referrals of Collection and Enforcement:** DOH and OMIG further agree not to refer the collection or enforcement of any matter that has been withdrawn, discontinued and released with prejudice under the Settlement Agreement (a "discontinued matter") to any other agency or instrumentality of the State, including but not limited to the Office of Attorney General's Civil Recoveries Bureau, for purposes of collecting or enforcing a discontinued matter, and DOH and OMIG further agree to withdraw the referral of any such discontinued matter previously so referred.

13. **Releases:** Each Distributee, including a Distributee that is a Facility that is now closed, shall sign a Release, in a format acceptable to the State, agreeing to the withdrawal, discontinuance and release with prejudice of any known or unknown claims, rate appeals or litigation relating to:

13.1 Medicaid reimbursement rates and/or any reimbursement methodology utilized for Facilities prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law, regardless of whether such claim, rate appeal or litigation: (i) was filed prior or subsequent to January 1, 2012; (ii) did, or may have resulted in a favorable decision for the Facility, former or current owner of a Facility or the State; or (iii) would or may have resulted in adjustments in favor of a Facility, former owner of a Facility, current owner of a Facility and/or the State, and

13.2 **(i)** Wage Equalization Factor claims by Facilities, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims by Facilities, in connection with any Medicaid rate reimbursement methodology;

(ii) Case Mix adjustments claims by Facilities related rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;

(iii) Rebasing issues, including hold harmless claims and the $210 million scale back; and

(iv) DOH being compelled to consider a rate appeal under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law prior to the date of the last installment payment made under section 6 herein.

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13.3 The Medicaid Global Cap, as such term is defined in sections 91 and 92 of Part H of chapter 59 of the laws of 2011, as amended.

14. **Indemnification**: Distributees that currently own or operate a Facility shall indemnify the State against any claims by former owners or operators of such Facility related to any claims, rate appeals, or litigation matters withdrawn, discontinued, and released by the current owner Distributees under the terms of this Settlement Agreement.

15. **CMS involvement:** The Settlement Agreement is conditioned upon federal financial participation and written approval of the Settlement Agreement by CMS.

16. **Industry Participation:** The Settlement Agreement is contingent upon universal participation by the industry, as determined solely by the State.

17. **No new rights or obligations:** The Settlement Agreement does not create any Medicaid rate appeal, litigation or other rights or obligations inconsistent with the provisions of subdivision 2-c of section 2808 of the Public Health Law and regulations enacted thereunder, nor shall this settlement be deemed to impose any additional restrictions upon challenges to rates established for any rate period beginning on or after January 1, 2012 with the exception of any challenges related to:

    (i) Wage Equalization Factor claims, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims related to any Medicaid rate reimbursement methodology;

    (ii) Case Mix adjustments related to rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;

    (iii) Rebasing issues, including hold harmless claims and the $210 million scale back;

    (iv) DOH being compelled to consider a rate appeal under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law prior to the date of the last installment payment made under section 6 herein; and

    (v) The Medicaid Global Cap, as such term is defined in sections 91 and 92 of Part H of chapter 59 of the laws of 2011, as amended.

18. **Reservation of the State's Rights:** The State reserves the right to decline to enter into this Settlement Agreement if any proposed Distributees do not participate in this Settlement Agreement.

19. **Failure to Enter Into a Settlement Agreement:** Should the parties fail to reach a Settlement Agreement the terms and conditions listed herein shall be unenforceable against the respective parties and shall not be admissible in the various courts of New York.

20. **Proposed Legislation**: The State, through the Governor, agrees to propose legislation with an effective date of April 1, 2015 and an expiration date of March 31, 2019, that will extend paragraph (b) of subdivision 17 of section 2808 of the Public Health Law with identical provisions with the only exceptions being: (i) that of the $80 million aggregate annual appeals cap currently provided therein, only $30 million shall be attributable to rate appeals and, the remaining $50 million being set aside annually in accordance with Section 2.2(ii) herein, and (ii) that the commissioner shall not be required to revise certified rates of payment established pursuant to Article 28 of the Public Health Law for rate periods prior to April 1, 2019 based on consideration of rate appeals filed by residential health care facilities or based upon adjustment to capital cost reimbursement as a result of approval by the commissioner of an application for construction under Section 2802 in excess of an aggregate annual amount of $30 million for each state fiscal year. The Governor shall use best efforts to obtain legislative approval of such statutory amendment.