

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 Colorado, acting through the Colorado State Attorney General and on behalf of the Department of Health Care Policy and Financing (“HCPF”) (collectively the “State”); Denver Health and Hospital Authority dba Denver Health Medical Center (collectively “DHHA”); and Relator Joanne Curren (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. DHHA owns Denver Health Medical Center, which is Colorado’s primary “safety net” institution, providing care for the uninsured. The mission of Denver Health Medical Center is to provide access to the highest quality health care, whether for prevention, or acute and chronic diseases, regardless of ability to pay. Denver Health Medical Center is located at 777 Bannock Street, Denver, Colorado 80204.

B. On July 24, 2009, Relator Joanne Curren filed a *qui tam* action in the United States District Court for the District of Colorado captioned *United States ex rel. Curren v. Denver Health et al.*, 09-cv-01752-RBJ-KMT (D. Colo), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator alleges that DHHA submitted false claims to Medicare and Medicaid by improperly submitting claims for short hospital stays as though they were “inpatient” stays when they should have been billed as less expensive “outpatient” or “observation” stays.

C. The United States contends that DHHA submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and the Medicaid Program (“Medicaid”), 42 U.S.C. §§ 1396-1396w.

D. The United States contends that it has certain civil claims against DHHA arising from DHHA’s submission of claims to Medicare and Medicaid for reimbursement for inpatient level services when only outpatient or observation level services were provided, during the period from January 1, 2006, through December 31, 2009. This conduct is hereinafter referred to as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by DHHA, its officers or employees, nor a concession by the United States that its claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ 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. DHHA shall pay to the United States \$6,300,000.00 (“Settlement Amount”) by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of Colorado no later than fifteen days after the Effective Date of this Agreement. The United States will promptly pay the State of Colorado \$1,106,608.00 from this payment of the settlement amount for the State’s share of the Medicaid payments.

2. Conditioned upon the United States receiving the Settlement Amount from DHHA and as soon as feasible after receipt, the United States shall pay \$817,959.00 to Relator by electronic funds transfer.

3. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon DHHA's full payment of the Settlement Amount, the United States releases DHHA, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; and the successors and assigns of any of them, from any civil or administrative monetary claim the United States has 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 by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon DHHA's full payment of the Settlement Amount, the State of Colorado and its departments and agencies release DHHA, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; and the successors and assigns of any of them, from any civil or administrative monetary claim the State of Colorado has for the Covered Conduct under Colo. Rev. Stat. §25.5-4-301, the Medicaid False Claims Act, Colo. Rev. Stat. §25.5-4-303.5 et seq., or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon DHHA's full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases DHHA from any civil monetary

claim the relator has on behalf of herself or the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. In consideration of the obligations of DHHA in this Agreement, and conditioned upon DHHA's full payment of the Settlement Amount, the State of Colorado and its departments and agencies agree to release and refrain from instituting, directing, requesting, or maintaining any administrative action seeking exclusion from Medicaid and other State health care programs under Colorado law for the Covered Conduct, except as reserved in Paragraph 8 (concerning excluded claims), below, and as reserved in this Paragraph. The State of Colorado expressly reserves all rights to comply with any statutory obligations to initiate or recommend exclusion of DHHA based upon the Covered Conduct. Nothing in this Paragraph precludes the State of Colorado from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below.

7. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against DHHA and/or its officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

8. Notwithstanding the releases given in Paragraphs 3, 4, 5, and 6 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of Colorado 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 the State of Colorado (or their agencies) for any conduct other than the Covered Conduct;
- e. Any civil or administrative liability that any person or entity, including any Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 4 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- f. any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;
- g. Any liability under state revenue codes;
- h. Any liability based upon obligations created by this Agreement;
- i. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- j. Any liability for failure to deliver goods or services due;
- k. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and

1. Any liability of individuals.

9. Relator and her 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). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases DHHA, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

11. DHHA waives and shall not assert any defenses DHHA 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 concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

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

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 Medicare carrier or intermediary or any state payer, related to the Covered Conduct; and DHHA agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. DHHA 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 DHHA, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) DHHA's investigation, defense, and corrective actions undertaken in response to the United States' 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; and
- (5) the payment DHHA makes to the United States pursuant to this Agreement and any payments that DHHA may make to Relator, including costs and attorneys fees, 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").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by DHHA, and DHHA 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 DHHA or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: DHHA 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 DHHA 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. DHHA agrees that the United States, at a minimum, shall be entitled to recoup from DHHA 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 DHHA or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on DHHA 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 DHHA'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. DHHA 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. As soon as possible following the Effective Date of this Agreement, the Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1) and 31 U.S.C. § 3730(c)(3).

18. 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 District of Colorado. 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 DHHA's successors, transferees, heirs, and assigns.

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

26. All parties consent to the United States' 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.

THE UNITED STATES OF AMERICA

DATED: 12/28/11

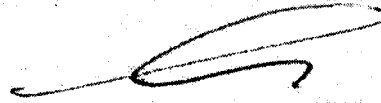
BY: JOHN F. WALSH
United States Attorney



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Counsel for the United States

DATED: 12/21/11

BY: _____

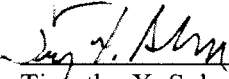


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STATE OF COLORADO

JOHN SUTHERS, ATTORNEY GENERAL
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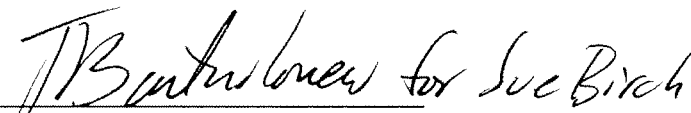
DATED: 12-21-2011

BY: 
Timothy X. Sokas
First Assistant Attorney General
Director, Medicaid Fraud Control Unit

STATE OF COLORADO MEDICAID PROGRAM

COLORADO DEPARTMENT OF HEALTH
CARE POLICY & FINANCING

DATED: 12/28/11

BY: 
Susan E. Birch, MBA, BSN, RN
Executive Director

DENVER HEALTH AND HOSPITAL AUTHORITY

DATED: 12-21-11 BY: Patricia A. Gabow, M.D.
On Behalf of Patricia A. Gabow, M.D.
Chief Executive Officer

DATED: 12/21/11 BY: Michael M. Mustokoff
Michael M. Mustokoff
Duane Morris
30 South 17th Street
Philadelphia, PA 19103

JOANNE CURREN

DATED: 12/21/2011

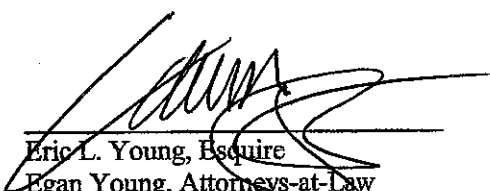
BY:



Joanne Curren
Relator

DATED: 12/21/11

BY:



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