

**Settlement Agreement**

**Parties**

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Attorney for the Northern District of Illinois and the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively the “United States”); the State of Illinois acting through the Office of the Illinois Attorney General (the “State of Illinois”); and, Condell Health Network, Condell Medical Center and their affiliates (collectively “Condell”) (each a “Party” and hereafter referred to collectively as “the Parties”), through their authorized representatives.

**Preamble**

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

A. Condell Medical Center is a not-for-profit, independent acute care facility with 283 licensed beds located in Libertyville, Illinois, which made a voluntary disclosure to the United States Attorney’s Office for the Northern District of Illinois in May 2008.

B. Condell Health Network is the not-for-profit parent corporation of Condell Medical Center.

C. Condell Health Network is engaged in negotiations to sell all or substantially all of its assets and those of Condell Medical Center.

D. The United States and the State of Illinois contend that Condell Medical Center submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act (SSA), 42 U.S.C. §§ 1395-1395hhh, and the Medicaid Program, 42 U.S.C. §§ 1396-1396v.

E. The United States and the State of Illinois contend that they have certain civil claims, as specified in this Paragraph E below, against Condell for engaging in the following conduct during the period from January 1, 2002 to December 31, 2007:

(1) Condell Medical Center had arrangements for the provision of various professional services with physicians who referred patients to Condell Medical Center (the “Referring Physicians”), which arrangements failed to meet the requirements of Section 1877 of the SSA, 42 U.S.C. § 1395nn (also known as the “Stark Law”), and/or violated the Anti-Kickback Statute, Section 1128b of the SSA, 42 U.S.C. § 1320a-7b(b); and submitted, or caused the submission of, Medicare and Medicaid claims for patients of the Referring Physicians as well as Medicare and Medicaid cost reports containing false certifications of compliance. Certain of Condell Medical Center’s arrangements with the Referring Physicians for the provision of various professional services were not always reduced to writing and, even if in written format, did not always comport with all of the requirements of the potentially applicable Stark Law exceptions or any Anti-Kickback Statute safe harbor. These claims were false because (a) the Stark Law prohibited Condell Medical Center from billing Medicare and Medicaid for items or services referred or ordered by physicians with whom it had such financial relationships; (b) Condell Medical Center forfeited its right to bill Medicare and Medicaid for such services by knowingly paying remuneration intended to induce those and other referrals in violation of the Anti-Kickback Act; and (c) Condell Medical Center was required to and did certify on cost reports submitted to fiscal intermediaries for the relevant cost report years that services identified in each cost report were not provided or procured through the payment directly or indirectly of a kickback or were otherwise illegal;

(2) Condell entered into certain lease arrangements with Referring Physicians who occupied space in medical office buildings owned and operated by Condell which failed to meet the requirements of the Stark Law, and/or violated the Anti-Kickback Statute, Section 1128b of the SSA, 42 U.S.C. § 1320a-7b(b); and submitted, or caused the submission of, Medicare and Medicaid claims for patients of the Referring Physicians as well as Medicare and Medicaid cost reports containing false certifications of compliance. Condell had lease arrangements with the Referring Physicians with rental rates that were below fair market value or for which Condell allowed rent abatement or deferred collection of rental payments due and owing from the Referring Physicians. These claims were false because (a) the Stark Law prohibited Condell Medical Center from billing Medicare and Medicaid for items or services referred or ordered by physicians with whom it had such financial relationships; (b) Condell Medical Center forfeited its right to bill Medicare and Medicaid for such services by knowingly paying remuneration intended to induce those and other referrals in violation of the Anti-Kickback Act; and (c) Condell Medical Center was required to and did certify on cost reports submitted to fiscal intermediaries for the relevant cost report years that services identified in each cost report were not provided or procured through the payment directly or indirectly of a kickback or were otherwise illegal;

(3) Condell entered into certain financial support agreements and loans secured by promissory notes with Referring Physicians which failed to meet the requirements of the Stark Law, and/or violated the Anti-Kickback Statute, Section 1128b of the SSA, 42 U.S.C. § 1320a-7b(b); and submitted, or caused the submission of, Medicare and Medicaid claims for patients of the Referring Physicians as well as Medicare and Medicaid cost reports containing false certifications of compliance. Condell allowed Referring Physicians with such support

agreements to “work off” the amounts due and owing under such agreements or loans at hourly rates that were greater than fair market value, as well as with activities that did not benefit the community. Condell also entered into these support agreements with Referring Physicians without assessing whether there was a particular community need for such arrangements or physicians, extended agreements to physicians already in Condell Medical Center’s service area, entered into agreements which benefited individual physicians or physician groups rather than the community and entered into multiple such agreements with the same Physician or physician groups. Condell also paid its physician recruiters incentive bonuses. Many of the support agreements prohibited physicians from obtaining admitting privileges at any other hospital. These claims were false because (a) the Stark Law prohibited Condell Medical Center from billing Medicare and Medicaid for items or services referred or ordered by physicians with whom it had such financial relationships; (b) Condell Medical Center forfeited its right to bill Medicare and Medicaid for such services by knowingly paying remuneration intended to induce those and other referrals in violation of the Anti-Kickback Act; and (c) Condell Medical Center was required to and did certify on cost reports submitted to fiscal intermediaries for the relevant cost report years that services identified in each cost report were not provided or procured through the payment directly or indirectly of a kickback or were otherwise illegal.

All of the above conduct described in this Paragraph E shall hereinafter be referred to as the “Covered Conduct.”

F. The United States also contends that it has certain administrative claims against Condell for engaging in the Covered Conduct.

G. The United States and the State of Illinois acknowledge that Condell voluntarily disclosed the Covered Conduct to the United States Department of Justice.

H. This Agreement is neither an admission of liability by Condell nor a concession by the United States or the State of Illinois that their respective claims are not well founded.

I. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

**Terms and Conditions**

1. Condell agrees to pay the total amount, without interest, of \$36 million (the “Settlement Amount”). The payment shall be made as follows:

(a) Condell will pay Thirty Three Million One Hundred Twenty Thousand Dollars (\$33,120,000.00) to the United States by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney’s Office for the Northern District of Illinois. This electronic funds transfer will be made on the Effective Date (as herein defined) of this Agreement.

(b) Condell will pay Two Million Eight Hundred Eighty Thousand Dollars (\$2,880,000.00) to the State of Illinois by certified check pursuant to written instructions to be provided by the Office of the Illinois Attorney General. This check will be dated as of the Effective Date of this Agreement.

2. The Effective Date of this Agreement shall be the closing date, if any, of the sale of all or substantially all of Condell’s assets to a third party.

3. Subject to the exceptions in Paragraph 6 (concerning excluded claims), below, in consideration of the obligations of Condell in this Agreement, conditioned upon Condell’s full payment of the Settlement Amount, and subject to Paragraph 16, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment

made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Condell from any and all civil or administrative monetary claim the United States has or may have 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. No individuals are released by this Agreement.

4. In consideration of the obligations of Condell in this Agreement and conditioned upon Condell's full payment of the Settlement Amount, and subject to Paragraph 16, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Condell under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 6 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 6, below.

5. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of Condell set forth in this Agreement conditioned upon Condell's full payment of the Settlement

Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement), the State of Illinois agrees to release Condell from any and all civil or administrative monetary claims the State of Illinois has or may have under the Whistleblower Reward and Protection Act, 740 ILCS 175/3, and the Civil Remedies Section of the Public Aid Act, 305 ILCS 5/8A-7 or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct. No other individuals are released by this Agreement. The State of Illinois, acting by and through the Illinois Department of Healthcare and Family Services, expressly reserves all rights to comply with any statutory obligations to exclude Condell from the Medicaid program under 305 ILCS 5/12-4.25(B) (mandatory exclusion) for the Covered Conduct. Nothing in this Paragraph precludes State of Illinois from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 6, below or as reserved in this paragraph..

6. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Condell) are the following claims of the United States or the State of Illinois, as applicable:

- a. Any civil, criminal, or administrative 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 for any conduct other than the Covered Conduct;

- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability of individuals, including directors, officers and employees;
- i. Any claims for unfair, fraudulent or deceptive business practices that may be brought under state consumer protection statutes.

7. Condell has provided financial information to the United States and the United States and the State of Illinois have relied on the accuracy and completeness of that financial information in reaching this Agreement. Condell warrants that the financial information provided is complete, accurate, and current. If the United States or the State of Illinois learn of asset(s) in which Condell had an interest at the time of this Agreement that were intentionally not disclosed, or if the United States or the State of Illinois learn of any intentional misrepresentation by Condell on, or in connection with, the financial information, and if such nondisclosure or misrepresentation increases the estimated net worth of Condell by \$1 million or more, the United States and/or the State of Illinois may at their respective option: (a) rescind this Agreement and file suit based on the Covered Conduct or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Condell previously undisclosed. Condell agrees not to contest any collection action undertaken by the United States and/or the State of Illinois pursuant to this provision, and immediately to pay the United States and/or the State of Illinois all reasonable costs incurred in such an action, including attorney's fees and expenses.



8. In the event that the United States or the State of Illinois, pursuant to Paragraph 7 (concerning disclosure of assets), above, opts to rescind this Agreement, Condell agrees 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 United States or the State of Illinois within ten calendar days of written notification to Condell that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

9. Condell does not waive any defenses to any potential criminal actions; *provided, however,* Condell waives and shall not assert any defenses Condell 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 any comparable provision in Article 1, Section 10 of the Illinois Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution or any comparable provision in Article 1, Section 11 of the Illinois 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 or the State of Illinois concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code and/or Chapter 35 or Chapter 320 of the Illinois Compiled Statutes.

10. Condell fully and finally releases the United States and the State of Illinois, their agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Condell has asserted, could have asserted, or may assert in the future against the United States and the State of Illinois, their

agencies, employees, servants, and agents, related to the Covered Conduct and the United States' and the State of Illinois' investigation and prosecution thereof.

11. 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 Condell 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.

12. Condell agrees to the following:

a. Unallowable Costs Defined: that 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. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Condell, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "Unallowable Costs" on government contracts and under the Medicare and Medicaid Programs.

- (1) the matters covered by this Agreement;
- (2) the United States' investigation of the matters covered by this Agreement;
- (3) Condell's investigation, defense, and corrective actions undertaken in response to the United States' investigation 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 Condell makes to the United States and the State of Illinois pursuant to this Agreement, including costs and attorneys fees.

(All costs described or set forth in this Paragraph 10.a. are hereafter “Unallowable Costs.”)

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Condell further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare fiscal intermediaries, carriers, and/or contractors, and Medicaid 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 Condell 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. Condell agrees that the United States, at a minimum, shall be entitled to recoup from Condell 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 Condell or any of

its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Condell 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 Condell's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. 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 14 (waiver for beneficiaries paragraph), below.

14. Condell 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; provided, however, upon payment of the Settlement Amount, nothing in this Agreement shall require Condell to reopen any cost reports or to re-file any claims with Medicare or the Illinois Medicaid program to address the Covered Conduct.

15. Condell warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. 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 Condell, 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 Condell was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Condell commences, 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 Condell's debts, or seeking to adjudicate Condell as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Condell or for all or any substantial part of Condell's assets, Condell agrees as follows:

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

b. If Condell'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 United States and/or the State of Illinois, at their sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Condell for the claims that would otherwise be covered by the releases provided in Paragraphs 3, 4, and 5 above. Condell agrees that (i) any such claims, actions, or

proceedings brought by the United States or the State of Illinois (including any proceedings to exclude Condell from participation in Medicare, Medicaid, or other Federal health care programs) 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 Condell shall not argue or otherwise contend that the United States’ or the State of Illinois’ claims, actions, or proceedings are subject to an automatic stay; (ii) Condell shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States or the State of Illinois within ten calendar days of written notification to Condell that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the United States and the State of Illinois have a valid claim against Condell in the amount of One Hundred Fifty Million Dollars (\$150,000,000.00), and the United States and the State of Illinois may pursue their 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. Condell acknowledges that its agreements in this Paragraph 16 are provided in exchange for valuable consideration provided in this Agreement.

17. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Condell represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Northern District of Illinois.

20. For purposes of construction, 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 among the Parties. This Agreement may not be amended except by written consent of the Parties.

22. The individuals signing this Agreement on behalf of Condell represent and warrant that they are authorized by Condell to execute this Agreement. The United States and the State of Illinois signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Facsimiles and PDF copies of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

24. This Agreement is binding on Condell's successors, transferees, heirs, and assigns.

25. All parties consent to the United States' or the State of Illinois' disclosure of this Agreement, and information about this Agreement, to the public.

**The United States of America**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

LINDA A. WAWZENSKI  
Assistant United States Attorney  
Northern District of Illinois

Dated: \_\_\_\_\_

By: \_\_\_\_\_

GREGORY E. DEMSKE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health  
and Human Services



**The State of Illinois**

Dates: \_\_\_\_\_

By: \_\_\_\_\_

PATRICK KEENAN  
Assistant Attorney General  
Office of the Attorney General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601

**Condell Medical Center**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Dennis Millirons  
Chief Executive Officer  
Condell Medical Center  
801 South Milwaukee Avenue  
Libertyville, Illinois 60048

**Condell Health Network**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Dennis Millirons  
Chief Executive Officer  
Condell Health Network  
801 South Milwaukee Avenue  
Libertyville, Illinois 60048