

## SETTLEMENT AGREEMENT AND RELEASE

The parties to this Settlement Agreement and Release ("Agreement") are the United States of America, acting through the United States Attorney for the District of Colorado and the Office of Inspector General of the Department of Health and Human Services ("United States"); the State of Colorado ("State"), acting through its Attorney General's Medicaid Fraud Control Unit ("MFCU"); HMO Health Plans Inc. d/b/a San Luis Valley HMO, Inc. ("Relator"); and San Luis Valley Regional Medical Center, Inc. and Lutheran Hospital Association of the San Luis Valley, d/b/a San Luis Valley Regional Medical Center (collectively, "Hospital").

### I. RECITALS

A. San Luis Valley Regional Medical Center, Inc. is a non-profit corporation that owns certain hospital buildings in Alamosa, Colorado. Lutheran Hospital Association of the San Luis Valley, d/b/a San Luis Valley Regional Medical Center is a non-profit corporation doing business as a hospital in Alamosa. This Agreement will refer to these corporations collectively as the "Hospital." The Hospital is a Medicare and Medicaid provider.

B. On January 16, 1996, the Relator filed a qui tam action under the False Claims Act, 31 U.S.C. §§ 3729-33, against the Hospital in the U.S. District Court for the District of Colorado ("Qui Tam Action"). The Qui Tam Action is denominated United States of America ex rel. HMO Health Plans Inc. d/b/a San Luis Valley HMO, Inc. v. San Luis Valley Regional Medical Center, Inc., U.S.D.C. Civil Action No. 96-Z-116. The United States has intervened in the Qui Tam Action.

C. In the Qui Tam Action, the Relator alleged that during the period 1992 through 1993, the Hospital engaged in the following billing practices which allegedly violated the False

Claims Act: 1) billing Medicare for histograms (CPT Code 85029) whenever physicians ordered a Complete Blood Count (CPT Code 85025 or 85027); 2) billing Medicare for multiple venipunctures (CPT Code 36415) for the same patient for the same day; 3) billing Medicare for excessive units of telemetry services (CPT Code 93012) for the same patient for the same day; 4) billing Medicare for EKG and rhythm strip interpretations (CPT Codes 93010 and 93040) when those services should have been included in billings for emergency room services (CPT Codes 99282, 99283, or 99284); 5) billing Medicare for upper gastro-intestinal radiological examinations (CPT Code 74240) when that service should have been included in billings for small bowel procedures (CPT Code 74245); and 6) billing Medicare for both a stab incision (CPT Code 66820) and a laser capsulotomy (CPT Code 66821) for the same patient.

D. The United States and the State have investigated all billing patterns alleged in the Qui Tam Action, by or on behalf of the Hospital, with respect to both the Medicare and Medicaid programs, for the time period 1991 through 1996.

E. The United States contends that it has certain claims and causes of action against the Hospital predicated upon the False Claims Act, 31 U.S.C. §§ 3729-3733, as amended; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12; and the provisions for exclusion from the Medicare, Medicaid, and federal health care programs (as defined by 42 U.S.C. § 1320a-7b(f)), 42 U.S.C. § 1320a-7 and 42 U.S.C. § 1320a-7a; as well as under common law theories, for damages and penalties arising out of the conduct alleged in the Qui Tam complaint and/or in paragraphs C and D above.

F. The State contends that it has certain claims and causes of action against the Hospital predicated upon the authority contained in the Colorado Human Services Code, Title 26.

Colorado Revised Statutes, and common law, for damages and penalties arising out of the conduct alleged in the Qui Tam complaint and/or in paragraphs C and D above.

G. The Hospital has filed an answer denying the material allegations of the complaint and interposing defenses to the claims in the Qui Tam Action, and it expressly denies that it has violated the False Claims Act or any other federal or state law relating to billing for Medicare, Medicaid, or any other program or purpose. This Agreement is not, and shall not be construed as, an admission of wrongdoing or liability on the part of the Hospital.

H. In order to avoid the uncertainty and expense of litigation, the parties desire to settle all issues and disputes between them based on the conduct alleged in the Qui Tam complaint and/or in paragraphs C and D above.

## II. AGREEMENT

1. Immediately upon execution of this Agreement, the United States and Relator will provide the Hospital with a signed motion to dismiss the Qui Tam Action with prejudice in the form attached as Exhibit A. The Hospital will be responsible for filing the motion with the Court.

2. Immediately upon receipt of the signed motion to dismiss, the Hospital will pay the United States the sum of \$265,000 (two hundred sixty-five thousand dollars) ("settlement proceeds"), by check payable to the United States Department of Justice and delivered to Assistant United States Attorney Lisa A. Christian.

3. The Hospital and the Office of Inspector General of the U.S. Department of Health and Human Services ("HHS") will execute a Corporate Integrity Agreement in the form attached as Exhibit B. The Corporate Integrity Agreement is incorporated herein by reference.

4. The United States and the State agree not to exclude the Hospital or any of its

officers, directors, or employees from Medicare, Medicaid, or any other federal health care programs pursuant to the permissive exclusion provisions set forth at 42 U.S.C. § 1320a-7a, 42 U.S.C. § 1320a-7(b), or 42 U.S.C. § 1320a-7(d), for the conduct alleged in the Qui Tam complaint and/or in paragraphs C and D above.

5. The Hospital agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395 et seq. and 1396 et seq. and the regulations promulgated thereunder) incurred by or on behalf of the Hospital in connection with 1) the government's investigation, and the Hospital's investigation and defense of the matters covered by this Agreement; 2) the negotiation of this Agreement; 3) any corrective action undertaken by the Hospital relating to the released acts; 4) implementation of the attached Corporate Integrity Agreement; and 5) the payments made to the United States and the Relator pursuant to this Agreement (including the Relator's attorneys' fees, costs, and expenses paid pursuant to paragraph 12), shall be unallowable costs for government contract accounting and for Medicare, Medicaid, CHAMPUS, VA and FEHBP reimbursement purposes. These amounts shall be separately estimated and accounted for by the Hospital, and the Hospital will not charge such costs directly or indirectly to any contracts with the United States or any State Medicaid program, or to any cost report, cost statement, or information statement submitted by the Hospital to the Medicare, Medicaid, CHAMPUS, VA, or FEHBP programs. The Hospital agrees further that within 60 days it will identify to applicable Medicare and CHAMPUS fiscal intermediaries, carriers, and/or contractors and Medicaid fiscal agents any unallowable costs (as defined in this paragraph) included in payments sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in

any cost reports, cost statements or information reports already submitted by the Hospital, and will request that such cost reports, cost statements or information reports, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Any payments due after the adjustments have been made shall be paid to the United States at the direction of the Department of Justice and/or the affected agencies, at the time specified by the Department of Justice and/or the affected agencies and in accordance with governing statutes and regulations. The United States reserves its right to disagree with any calculations submitted by the Hospital on the effect of inclusion of unallowable costs (as defined in this paragraph) on the Hospital's cost reports, costs statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of HHS, or any Medicare or CHAMPUS fiscal intermediary or contractor, or any Medicaid fiscal agent, to examine or reexamine the unallowable costs described in this paragraph, or of the Hospital to contest any determination resulting from such examination or reexamination.

6. Subject to the exceptions in paragraph 7 below, and subject to the condition that no voluntary or involuntary bankruptcy petition naming the Hospital as debtor may be filed within 120 days from the effective date of this Agreement, and in consideration of the Hospital's obligations under this Agreement, the United States hereby releases the Hospital and its officers, directors, employees, successors, assigns, and transferees from any civil or administrative monetary claim that the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-33; the Contract Disputes Act, 41 U.S.C. §§ 601-13; the common law; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12; and/or the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, for any and all conduct by or on behalf of the Hospital, which is alleged in the

Qui Tam complaint and/or paragraphs C and D above. If any voluntary or involuntary bankruptcy petition naming the Hospital as debtor is filed within 120 days from the effective date of this Agreement, then this release shall be null and void.

7. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of the United States' release are any and all:

(1) criminal liability that may arise from the conduct alleged in the Qui Tam complaint and/or in paragraphs C and D above, and any related administrative action for mandatory exclusion from Medicare, Medicaid, and federal health care programs pursuant to 42 U.S.C. § 1320a-7(a) ;

(2) claims that may arise under Title 26, United States Code (Internal Revenue Service Code) or under securities laws;

(3) liability to the United States (or any agencies thereof) for any other conduct other than that alleged in the Qui Tam complaint and/or in paragraphs C and D above;

(4) claims against any individuals other than the Hospital and its officers, directors, employees, successors, assignees, and transferees;

(5) claims related to Medicare billings other than those alleged in the Qui Tam complaint and/or in paragraphs C and D above; and

(6) claims related to obligations created by this Agreement.

8. Subject to the exceptions in paragraph 9 below, and subject to the condition that no voluntary or involuntary bankruptcy petition naming the Hospital as debtor may be filed within 120 days from the effective date of this Agreement, and in consideration of the Hospital's obligations under this Agreement, the State hereby releases the Hospital and its officers, directors,

employees, successors, assigns, and transferees from any civil and administrative monetary claim arising from the conduct by or on behalf of the Hospital, which is alleged in the Qui Tam complaint and/or in paragraphs C and D above. If any voluntary or involuntary bankruptcy petition naming the Hospital as debtor is filed within 120 days from the effective date of this Agreement, then this release shall be null and void.

9. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of the State's release are any and all:

(1) criminal liability that may arise from the conduct alleged in the Qui Tam complaint and/or in paragraphs C and D above, and any related administrative action for mandatory exclusion from Medicare, Medicaid, and federal health care programs pursuant to 42 U.S.C. § 1320a-7(a) ;

(2) liability to the State for any other conduct other than that alleged in the Qui Tam complaint and/or in paragraphs C and D above;

(3) claims against any individuals other than the Hospital and its officers, directors, employees, successors, assigns, and transferees;

(4) claims related to Medicaid billings other than those alleged in the Qui Tam complaint and/or in paragraphs C and D above; and

(5) claims related to obligations created by this Agreement.

10. The Relator agrees that this settlement is fair, adequate, and reasonable, and it will not challenge the settlement pursuant to 31 U.S.C. § 3730(c)(2)(B) or otherwise.

11. The Relator's share of the settlement proceeds pursuant to 31 U.S.C. § 3730(d) shall be \$39,750 (thirty-nine thousand seven hundred and fifty dollars). The United States will

remit this amount to the Relator after the United States receives payment from the Hospital pursuant to paragraph 2 above. The United States is not obligated to pay the Relator unless and until the Hospital pays the United States pursuant to paragraph 2.

12. The Relator has asserted a claim pursuant to 31 U.S.C. § 3730(d)(2) to recover from the Hospital its reasonable and necessary expenses, and its reasonable attorneys' fees and costs incurred in connection with the Qui Tam Action. That statute provides in pertinent part that a relator "shall ... receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs." The Relator and the Hospital have executed, or will execute, a separate settlement agreement between themselves, pursuant to which the Hospital will pay the Relator a sum of money that will fully satisfy the Relator's claim for expenses, attorneys' fees, and costs.

13. The Relator agrees to release the United States and its officers, agents, and employees from any liability arising from the filing of the Qui Tam complaint, including any claims to a share of the settlement proceeds under 31 U.S.C. § 3730(d), except as provided at paragraph 11 above.

14. The Hospital agrees to release the United States and the State and their agencies, officers, agents, and employees from any and all claims, causes of action, liens, lawsuits, liabilities, losses and damages, including attorney's fees, costs, and expenses, of every kind and nature whatsoever, regardless of legal theory and however denominated, whether known or unknown, suspected or unsuspected, past or future, which the Hospital has asserted or could have asserted against the United States, the State, their agencies, officers, employees, or agents, related to or arising from the facts alleged in the Qui Tam complaint and/or in paragraphs C and D above.



15. Nothing in any provision of this Agreement constitutes an agreement by the United States or the Hospital concerning the characterization of the amounts paid hereunder for purposes of any proceeding under Title 26, United States Code (Internal Revenue Code).

16. Within thirty days after the effective date of this Agreement, the United States will return to counsel for the Hospital all documents produced by the Hospital in connection with this matter that are covered by the stipulated Protective Order signed by the parties to the Qui Tam Action, and all copies thereof.

17. Except as stated in paragraph 12 above, the parties will bear their own costs and attorneys' fees in connection with this matter.

18. Each party, without further consideration, agrees to execute and deliver such other documents and to take any other action necessary to effect the provisions of this Agreement.

19. This Agreement shall be binding upon and inure to the benefit of the parties, and each of them, and upon their successors, assigns, and transferees.

20. All parties take full responsibility for and assume all obligations with respect to the payment of their own taxes.

21. The undersigned government signatories represent that they are signing this Agreement in their official capacities. All signatories represent and warrant that they are fully authorized and empowered to execute this Agreement.

22. This Agreement sets forth the entire agreement between the United States and the Hospital, and between the State and the Hospital, and between the United States and the Relator, and fully supersedes any and all prior agreements between those parties pertaining to the subject matter hereof.

23. Any amendment to this Agreement must be in writing signed by duly authorized representatives of the parties hereto and stating the intent of the parties to amend the Agreement, except that the Corporate Integrity Agreement may be separately modified in accordance with the terms of that agreement.

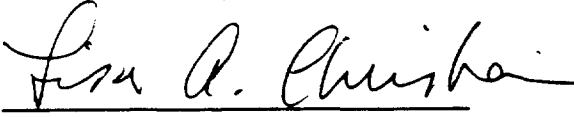
24. The effective date of this Agreement is the date when the Agreement is executed by all of the representatives of each of the Parties.

25. This Agreement may be signed in counterparts and each counterpart shall be considered an original agreement.

**UNITED STATES OF AMERICA**

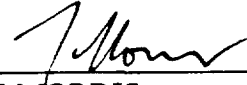
By: HENRY L. SOLANO  
United States Attorney

Dated: 12/19/97

By:   
LISA A. CHRISTIAN  
Assistant U.S. Attorney  
Attorneys for United States of America

**U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**


Dated: 12/2/97

By:   
LEWIS MORRIS  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of the Inspector General  
U.S. Department of Health and Human Services

STATE OF COLORADO

By: GALE A. NORTON  
Colorado Attorney General

Dated: 12-5-97

By:   
MILTON K. BLAKEY  
First Assistant Attorney General  
Director, Medicaid Fraud Control Unit  
Attorneys for State of Colorado

SAN LUIS VALLEY REGIONAL MEDICAL CENTER,  
INC.

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

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

Its: \_\_\_\_\_

LUTHERAN HOSPITAL ASSOCIATION OF THE SAN  
LUIS VALLEY, d/b/a SAN LUIS VALLEY REGIONAL  
MEDICAL CENTER

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

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

Its: \_\_\_\_\_

HMO HEALTH PLANS, INC. d/b/a SAN LUIS VALLEY  
HMO, INC.

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

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

Its: \_\_\_\_\_

STATE OF COLORADO

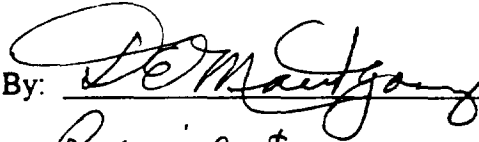
By: GALE A. NORTON  
Colorado Attorney General

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

By: \_\_\_\_\_  
MILTON K. BLAKEY  
First Assistant Attorney General  
Director, Medicaid Fraud Control Unit  
Attorneys for State of Colorado

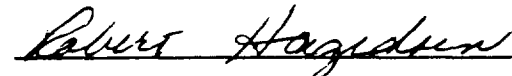
SAN LUIS VALLEY REGIONAL MEDICAL CENTER,  
INC.

Dated: 12/17/97

By:   
Its: President

LUTHERAN HOSPITAL ASSOCIATION OF THE SAN  
LUIS VALLEY, d/b/a SAN LUIS VALLEY REGIONAL  
MEDICAL CENTER

Dated: 12-14-97

By:   
Its: Vice President

HMO HEALTH PLANS, INC. d/b/a SAN LUIS VALLEY  
HMO, INC.

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

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

STATE OF COLORADO

By: GALE A. NORTON  
Colorado Attorney General

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

By: \_\_\_\_\_  
MILTON K. BLAKEY  
First Assistant Attorney General  
Director, Medicaid Fraud Control Unit  
Attorneys for State of Colorado

SAN LUIS VALLEY REGIONAL MEDICAL CENTER,  
INC.

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

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

Its: \_\_\_\_\_

LUTHERAN HOSPITAL ASSOCIATION OF THE SAN  
LUIS VALLEY, d/b/a SAN LUIS VALLEY REGIONAL  
MEDICAL CENTER

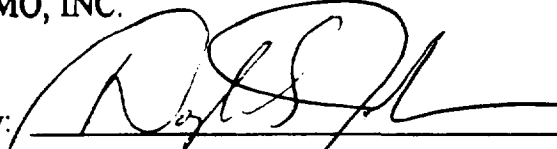
Dated: \_\_\_\_\_

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

Its: \_\_\_\_\_

HMO HEALTH PLANS, INC. d/b/a SAN LUIS VALLEY  
HMO, INC.

Dated: 12/11/97

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

Its: Executive Director & CEO

Approved as to Form and Content:

DAVIS, GRAHAM & STUBBS LLP

Dated: Dec. 19, 1997

By: Gale T. Miller  
GALE T. MILLER, Esq.  
Attorneys for San Luis Valley Regional Medical Center

VERNER, LIPFERT, BERNHARD, McPHERSON &  
HAND, Chartered

Dated: Dec 8 1997

By: Don Lewis  
DON C. LEWIS, Esq.  
Attorneys for HMO Health Plans, Inc. d/b/a San Luis Valley  
HMO, Inc.

OTTEN, JOHNSON, ROBINSON, NEFF & RAGONETTI

Dated: Dec. 12, 1997

By: David W. Stark  
DAVID W. STARK, Esq.  
Attorneys for HMO Health Plans, Inc. d/b/a San Luis Valley  
HMO, Inc.