

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice (the "United States") and the Office of Inspector General of the Department of Health and Human Services ("HHS-OIG"), and Charter Behavioral Health Systems, Inc., now known as Magellan CBHS Holdings, Inc. ("CBHS Holdings"), Charter Behavioral Health Systems, LLC ("CBHS LLC"), Charter Hospital of St. Louis, Inc. d/b/a Charter Hospital Orlando South ("Charter Hospital St. Louis"), and Charter Behavioral Health System Orlando, L.P. ("Charter Hospital") (CBHS LLC and Charter Hospital collectively referred to as "Charter Behavioral") (CBHS Holdings, CBHS LLC, Charter Hospital St. Louis and Charter Hospital all collectively referred to as "Charter"), and the qui tam relators, Francine Mettevelis and Rhea Rowan ("Relators"), through their authorized representatives (hereafter referred to as the "Parties").

II. PREAMBLE

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

following:

A. Defendant Charter Hospital St. Louis is a Missouri corporation, which did business as Charter Hospital Orlando South, and formerly had a principal office and place of business in Kissimmee, Florida, 34741. Charter Hospital St. Louis is a wholly-owned subsidiary of defendant CBHS Holdings, a Delaware corporation. From at least 1989, and during the applicable time period, CBHS Holdings through its wholly owned subsidiary, Charter Hospital St. Louis, operated a for-profit psychiatric hospital with approximately 50 beds located at the same Kissimmee address as above. Charter Hospital in Kissimmee is the central situs of the activities that are the subject of this Agreement. CBHS Holdings has its principal offices at 3414 Peachtree Road, N.E., Suite 1400, Atlanta, Georgia, 30326. CBHS Holdings is a wholly owned subsidiary of Magellan Health Services, Inc., which has its principal offices at 3414 Peachtree Road, NE, Suite 1400, Atlanta Georgia, 30326. CBHS Holdings's hospital subsidiaries were organized into divisions for purposes of corporate oversight and management. During the applicable time period Charter Hospital St. Louis was assigned to CBHS Holdings's "Gulf Division" along with at least eleven other hospitals in Florida, Alabama, North Carolina, and Georgia.

B. CBHS Holdings and/or Charter Hospital St. Louis 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. §§ 1395-1395ddd(1997).

C. On November 6, 1994, the Relators filed a qui tam complaint alleging violations of the False Claims Act by CBHS Holdings and/or Charter Hospital St. Louis in the case styled United States ex rel. Francine Mettevelis and Rhea Rowan v. Charter Hospital St. Louis, Inc. d/b/a Charter Hospital Orlando-South and Charter Behavioral Health Systems, Inc., No. 94-1170-CV-ORL-22 (M.D. Fla.) (the "Civil Action"). Thereafter, the United States intervened in the qui tam action and continues to contend that it has certain civil monetary claims against CBHS Holdings and/or Charter Hospital St. Louis under the False Claims Act, 31 U.S.C. §§ 3729-3733, and the common law doctrines of payment by mistake of fact and unjust enrichment, for allegedly engaging in a pattern and practice of knowingly falsely and fraudulently billing Medicare for services and knowingly falsely and fraudulently documenting services that were not provided to the patients from 1989 to July 1995.

D. The United States alleges in the Second Amended Complaint, filed by the United States, that from 1989 until

December 1996, CBHS Holdings and/or Charter Hospital St. Louis sought reimbursement from Medicare for providing services to Medicare beneficiaries, many of whom were suffering from dementia, organic brain disorders, dementia "not otherwise specified", and symptoms characteristic of Alzheimer's Disease. The United States alleges in the Second Amended Complaint and reiterates herein at Paragraphs C, D, and E, that these patients were admitted to Charter Hospital St. Louis a total of 374 times even though their admission and retention in an acute in-patient psychiatric hospital like Charter Hospital St. Louis were not medically necessary, reasonable or appropriate because the circumstances for these 374 Medicare beneficiary admissions did not require acute, in-patient psychiatric care.

E. In the Second Amended Complaint, the United States further alleges that claims for the treatment of such Medicare beneficiaries were submitted for Medicare reimbursement on forms entitled "Certification of Hospital and Health Care Complex Cost Report Certification and Settlement Summary" and "Certification of Hospital and Health Care Cost Report Certification and Settlement Summary" -- also known as Cost Reports. The United States alleges further that Charter Hospital St. Louis employees falsified patient medical records in an effort to obtain

reimbursement for the Medicare costs included in the Cost Reports for the years beginning August 1989 and ending in July 1995. The acts referred to in Paragraphs C through E and the allegations in the Second Amended Complaint are hereafter referred to as the Released Acts ("Released Acts").

F. Charter denies the allegations of the United States as set forth in Paragraphs C through E above as well as the remaining allegations set out in the Civil Action. Specifically, Charter contends that:

(1) Each of the 374 patient admissions referenced above received and benefitted from acute inpatient psychiatric care that was medically necessary, reasonable and appropriate;

(2) Because the care rendered by Charter Hospital St. Louis's health professionals was medically necessary, reasonable and appropriate, it was truthful, legal, appropriate and consistent with Medicare regulations to include in Charter Hospital St. Louis's Cost Reports the costs CBHS Holdings and/or Charter Hospital St. Louis incurred in providing such psychiatric treatment; and

(3) Charter Hospital St. Louis employees did not falsify patient medical records.

G. In order to avoid the disruption, delay, uncertainty,

inconvenience and expense of protracted litigation of these claims, the Parties have agreed to a full and final settlement as set forth below.

H. Relators and their counsel agree that the Settlement Agreement is fair, adequate, and reasonable, and further agree that they accept the terms of the Settlement Agreement as to them and that they will refrain from objecting, under 31 U.S.C. § 3730(c), to the terms of the Settlement Agreement.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. CBHS Holdings agrees to pay to the United States \$4,757,367.50 (the "Settlement Amount"), as follows: CBHS Holdings agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by The Department of Justice. CBHS Holdings agrees to make this electronic funds transfer by no later than 3:00 p.m. on the effective date of this Agreement.

2. Subject to the exceptions in Paragraph 3 below, and in

consideration of the obligations of Charter set forth in this Agreement, and conditioned upon CBHS Holdings's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) releases Charter, and each of its parents, affiliates, divisions, subsidiaries, predecessors, successors, assigns, transferees and each of their current or former directors, officers, and employees from any civil monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733 or the common law theories of payment by mistake and unjust enrichment for the Released Acts. Nothing in this Paragraph precludes the HHS Office of Inspector General ("HHS-OIG") or the United States from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 3, below.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following:

- (a) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (b) Any criminal liability for the Released Acts;

(c) Except as explicitly stated in this Agreement, any administrative liability relating to the Released Acts, including liability for mandatory exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)), pursuant to 42 U.S.C. § 1320a-7(a);

(d) Any liability to the United States (or its agencies) for any conduct other than the Released Acts;

(e) Any claims based upon any of the Parties' failure to fulfill those obligations as are created by this Settlement Agreement, including those obligations created by the Corporate Integrity Agreement ("CIA") referred to in Paragraph 12 and attached hereto as Exhibit A.

(f) Any claims against any individuals who are non-employee contractors of Charter Hospital St. Louis and/or Charter Hospital;

(g) Any civil claims against individuals, including current or former directors, officers, employees, agents or shareholders of defendants CBHS Holdings and Charter Hospital St. Louis who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Released Acts;

(h) Any claims for personal injury or property

damage or for other consequential damages arising from the Released Acts.

4. Concurrent with the execution of this Settlement Agreement and payment of the Settlement Amount by CBHS Holdings to the United States, the Parties shall execute a Joint Stipulation of Dismissal in the form attached hereto as Exhibit B. The Joint Stipulation of Dismissal will request that the Court, inter alia, enter an order dismissing with prejudice the Civil Action.

5. In consideration of Charter's obligations set forth in this Settlement Agreement and conditioned upon CBHS Holdings's payment in full of the Settlement Amount, and subject to Paragraphs 8-10 below, the HHS-OIG agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare program, Medicaid program, or other federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f), against Charter and each of its successors and assigns under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Released Acts, except as reserved in Paragraph 3, and in this paragraph. Nothing in this paragraph precludes the HHS-OIG from taking action against entities or

persons, or for conduct and practices, for which claims have been reserved in Paragraph 3.

6. Within a reasonable time after the effective date of this Settlement Agreement and CBHS Holdings's payment of the Settlement Amount, the United States shall pay the Relators the sum of \$903,899.82 (the "Relator Share") by delivery of a United States Treasury check payable to "Donald Peterson, counsel for Rhea Rowan and Francine Mettevelis." CBHS Holdings will pay the Relators the sum of fifty thousand dollars (\$50,000) (the "Relator fee") by certified check payable to "Donald Petersen, Counsel for Rhea Rowan and Francine Mettevelis" to be sent via overnight delivery (or wire transfer) concurrent with CBHS Holdings's wire transfer to the United States as satisfaction in full of all attorney's fees, costs and expenses incurred by the Relators and their counsel in the Civil Action.

7. The Relators and Charter agree that the Relator Share and the Relator fee, referenced above in Paragraph 6, shall be in full satisfaction of all claims, known or unknown, that the Relators may have against Charter, and each of its parents, affiliates, divisions, subsidiaries, predecessors, successors, assigns, transferees and each of their current or former directors, officers, and employees on account of their initiation

of the Civil Action, and their employment with Charter Hospital St. Louis, and is inclusive of all claims the Relators, their successors and assigns, or their counsel may have for attorney's fees, costs and expenses in connection with the Civil Action. For and in consideration of such payment, the Relators, for themselves, their heirs, successors, and assigns, release and forever discharge Charter, and each of its parents, affiliates, divisions, subsidiaries, predecessors, successors, assigns, transferees and each of their current or former directors, officers, and employees from any and all claims that the Relators have or may have, now or subsequent to the execution of this Agreement in any way arising from or related to their employment at Charter Hospital St. Louis, the Civil Action, the Released Acts, or the settlement under this Agreement. Charter, and each of its parents, affiliates, divisions, subsidiaries, predecessors, successors, assigns and transferees, release and forever discharge Relators from any and all claims that Charter has or may have, now or subsequent to the execution of this Agreement in any way arising from or related to their employment at Charter Hospital St. Louis, the Civil Action, the Released Acts or the settlement under this Agreement.

8. In compromise and settlement of the rights of HHS-OIG

to take administrative action against Charter Hospital St. Louis and/or Charter Hospital pursuant to 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) and 42 U.S.C. § 1320 a-7(b) (permissive exclusion authority), Charter Behavioral agrees that neither it nor its bona fide employees or entities will, directly or indirectly, seek reimbursement from the Fiscal Intermediary or Part B Carrier or any other entity for services covered under Medicare Part A or Part B or Part C which will be rendered at Charter Hospital ("Medicare Claims") for a period of fifteen (15) months (the "Non-billing Period") beginning August 1, 1998. This provision does not preclude physicians who are not bona fide Charter Hospital employees from submitting claims for their own Medicare Part B services rendered to Charter Hospital patients. Nor does this provision preclude Charter Behavioral from billing during the Non-billing Period private health maintenance organizations, provider sponsored organizations, private health plans or other private managed care organizations, provided that reimbursement is not sought from Medicare either directly or indirectly.

9. If Charter Behavioral seeks reimbursement for Medicare Part A or Part B or Part C services rendered by Charter Hospital or its bona fide employees during the Non-billing Period, Charter

Hospital is subject to, at the discretion of the HHS-OIG, an exclusion of three years and the imposition of civil monetary penalties and assessments. Charter Behavioral agrees that it will have no recourse or appeal of OIG's decision to impose such an exclusion or civil monetary penalty.

10. During the Non-billing Period, before a Medicare beneficiary is admitted to Charter Hospital, the beneficiary will be notified in writing of the following: (1) that Medicare will not pay for his or her hospitalization because of the Settlement Agreement; (2) that Medicare may pay for the hospitalization at another hospital, assuming other coverage requirements are met; and (3) that if the patient still wants to be admitted to Charter Hospital, he or she will not be liable for payment of the hospitalization costs. After ascertaining that the beneficiary possesses the mental capacity to understand the written notice, Charter Hospital shall ask the beneficiary to sign the notice. If the beneficiary lacks such capacity, Charter Hospital shall seek the signature of a representative with authority to sign for other Medicare matters on the beneficiary's behalf. Charter Hospital will follow the Advance Beneficiary Notice requirements set forth by HCFA. During the Non-billing Period, Charter Hospital will not seek reimbursement for the Medicare Claims from

the beneficiaries themselves. The United States agrees that, for those beneficiaries from whom Charter Behavioral does not seek collection, the United States will not enforce 42 U.S.C. § 1320a-7a(a)(5) against Charter Hospital during the Non-billing Period. Subject to the restrictions and limitations imposed by federal and state law, nothing in this Settlement Agreement, however, shall mandate or obligate Charter Hospital to accept and/or treat beneficiaries during the Non-billing Period.

11. If, within the discretion of the Assistant Inspector General for Legal Affairs, Charter Behavioral cooperates during the Non-billing Period in accordance with Paragraph 15, then the Non-billing Period shall be reduced by HHS-OIG from fifteen (15) to twelve (12) months. Every three (3) months during the Non-billing Period, Charter Behavioral may request from HHS-OIG a status report ("Status Report") as to whether, in the discretion of the Assistant Inspector General for Legal Affairs, Charter Behavioral is cooperating in accordance with Paragraph 15 -- which report the HHS-OIG will submit to Charter Behavioral within fifteen (15) calendar days of Charter Behavioral's written request. At the end of nine (9) months of the Non-billing Period, Charter Behavioral may request from HHS-OIG a Status Report as to whether, if Charter Behavioral's cooperation

continues, HHS-OIG believes it likely that the Non-billing Period shall be reduced by HHS-OIG from fifteen (15) to twelve (12) months in accordance with this Paragraph. No later than twelve (12) months after the beginning of the Non-billing Period, HHS-OIG will issue its decision to Charter Behavioral as to whether it will reduce the Non-billing Period from fifteen (15) to twelve (12) months in accordance with this Paragraph. The determination of whether Charter Behavioral substantially cooperated during the Non-billing Period in accordance with Paragraph 15 will not in any way be contingent upon the outcome of any investigation by HHS-OIG. Any request for a Status Report shall be sent to the following address:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, S.W.
Cohen Building, Room 5527
Washington, D.C. 20201

Any response to a request for a Status Report shall be sent to the following address:

Charter Behavioral Health Systems, L.L.C.
General Counsel's Office
1105 Sanctuary Parkway
Suite 400
Alpharetta, Georgia 30004

12. Contemporaneous with the execution of this Settlement

Agreement, Charter Behavioral will enter into a CIA with HHS-OIG.

13. Charter waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Released Acts, which defenses may be based in whole or in part on the Double Jeopardy or Excessive Fines Clause of the Constitution or the holding or principles set forth in *United States v. Halper*, 490 U.S. 435 (1989), and *Austin v. United States*, 113 S. Ct. 2801 (1993), and agrees that the Settlement Amount is not punitive in nature or effect for purposes of 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.

14. It is agreed 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. §§ 1395-1395ddd (1997) and 1396-1396v(1997), and the regulations promulgated thereunder) incurred by or on behalf of Charter, in connection with: (1) the matters covered by this Settlement Agreement; (2) the Government's investigations of the allegations and claims

which are the subject of this Settlement Agreement; (3) any of Charter's investigation and defense and corrective actions with respect to matters specifically covered by this Settlement Agreement, including attorney's fees and compliance with obligations under the CIA; (4) the negotiation of this Settlement Agreement; and (5) the payment made to the United States pursuant to this Settlement Agreement, shall be unallowable costs for Government contract accounting and for purposes of seeking reimbursement from the Medicare, Medicaid and other federal health care programs (hereafter, "unallowable costs"). Charter shall account separately for all unallowable costs for Government contract accounting purposes and for purposes of seeking reimbursement from the Medicare, Medicaid and other federal health care programs.

15. Charter covenants to cooperate fully and truthfully with any continuing investigation by the United States relating to the Released Acts. Such cooperation by Charter will require that, upon reasonable notice, Charter will make reasonable efforts to facilitate access to, and will not impede the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United

States, upon reasonable request, all non-privileged documents and records in its possession, custody or control, not previously produced to the United States, relating to the Released Acts. Charter shall not impede the United States in these other investigations.

16. This Settlement Agreement is intended to be for the benefit of the Parties, and their successors and assigns only and by this instrument the Parties do not release any claims against any other person or entity.

17. The Parties agree that this Settlement Agreement does not constitute an admission by any person or entity with respect to any allegation raised in the Civil Action or any issue of law or fact.

18. The United States and Charter will each bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Settlement Agreement.

19. Charter represents that it entered into this Settlement Agreement freely and voluntarily.

20. This Settlement Agreement is governed by the laws of the United States. Should any action to enforce or interpret this Settlement Agreement, or to resolve any dispute hereunder be

required, the Parties acknowledge the jurisdiction of the federal courts and agree that venue for any such action shall be in the United States District Court for the Middle District of Florida - - with the exception that disputes arising under the CIA shall be resolved in accordance with the provisions of the CIA.

21. This Settlement Agreement constitutes the complete agreement between the Parties. This Settlement Agreement may be amended only by written consent of the Parties.

22. The undersigned Charter signatories represent and warrant that they are authorized to execute this Settlement Agreement. The undersigned United States signatories represent that they are signing this Settlement Agreement in their official capacity and warrant that they are authorized to execute this Settlement Agreement.

23. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

24. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement.

25. Nothing in this Settlement Agreement, or any communication or report made pursuant to this Settlement Agreement, shall constitute or be construed as any waiver by

Charter of Charter's attorney-client, work product or other applicable privileges.

26. Subject to the Freedom of Information Act ("FOIA") procedures set forth in 45 C.F.R. Part 5, the United States shall make a reasonable effort to notify CBHS LLC prior to any release by the United States of information submitted by Charter pursuant to its obligations under this Settlement Agreement and identified upon submission as protected from public disclosure under FOIA rules, such as trade secrets, commercial, or financial information. Charter shall refrain from identifying any information as trade secrets, commercial or financial information that does not meet the criteria for exemption from disclosure under FOIA. Nothing in this Settlement Agreement shall be construed to prohibit the United States from providing to any department or agency of the United States or any State charged with enforcing the laws against health care fraud if the information relates to matters within the department's or agency's jurisdiction.

FOR THE UNITED STATES OF AMERICA:

DATED: 8/17/98

BY: T. Reed Stephens
T. REED STEPHENS
Trial Attorney, Civil Division
U.S. Department of Justice

DATED: 8.17.98

BY: L. Morris
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

FOR MAGELLAN CBHS HOLDINGS, INC., FORMERLY
CHARTER BEHAVIORAL HEALTH SYSTEMS, INC.
and CHARTER HOSPITAL ST. LOUIS, INC.
d/b/a CHARTER HOSPITAL ORLANDO-SOUTH:

DATED: 8/16/98

BY: David J. Hansen
DAVID HANSEN
General Counsel
Magellan Health Services, Inc.

FOR CHARTER BEHAVIORAL HEALTH
SYSTEMS, L.L.C. and CHARTER
BEHAVIORAL HEALTH SYSTEM ORLANDO, L.P.

DATED: 8/7/98

BY: Walter O'Byrne
TITLE: VP & Controller

Approved as to form and content:

DATED: 8/7/98

BY: [Signature]
LARRY D. THOMPSON
King & Spalding
Counsel for CBHS LLC and
Magellan Health Services, Inc.

FOR RELATORS:

DATED: August 13th, 1998

BY: Rhea Rowan R.N.
RHEA ROWAN

DATED: 13 August 1998

BY: Francine Mettevelis
FRANCINE METTEVELIS

Approved as to form and content:

DATED: August 13, 1998

BY: [Signature]
DONALD PETERSON
Counsel for Relators