

## 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 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 North Carolina, acting through the State of North Carolina Department of Justice, Medicaid Investigations Unit ("NC-DOJ"); Columbia/HCA Healthcare Corporation; and Relator Kathy Aldrich, R.N. ("Aldrich" or "Relator") (collectively "the Parties"), through their authorized representatives.

### II. PREAMBLE

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

A. Columbia/HCA Healthcare Corporation is a corporation organized under the laws of the State of Delaware with its corporate headquarters in Nashville, Tennessee. Through various affiliates, including Columbia Pacific Division, Columbia/HCA Healthcare Corporation owns and/or operates hospitals and other health care facilities and suppliers in several states. Columbia\HCA Healthcare Corporation operates Brunswick Hospital, an acute care hospital located in Supply, North Carolina, that also provides adult and adolescent psychiatric services. Columbia/HCA Healthcare Corporation, its affiliates and subsidiaries are referred to collectively hereinafter as "Columbia."

B. Aldrich resides in the State of South Carolina. During 1995 and 1996, she worked as a psychiatric unit charge nurse at Brunswick Hospital.

C. On August 11, 1997, Relator filed a qui tam action in the United States District Court for the Northern District of California against Columbia, Columbia Pacific Division, Inc., Richard L. Scott, David T. Vandewater, Magdalena Averhoff, M.D., R. Clayton McWhorter, Frank S. Royal, M.D., T. Michael Long, Donald S. MacNaughton, William T. Young, Thomas Frist, Jr., M.D., Rodman W. Moorehead III and Robert D. Walter (collectively, the "Defendants"), captioned United States ex rel. Aldrich v. Columbia/HCA Healthcare Corporation, et al., Case No. C 97-2943 TEH, alleging, among other things, that Columbia, acting through Brunswick Hospital, violated the False Claims Act, 31 U.S.C. §§ 3729-3733 (the "Civil Action"). The United States intervened, in part, in the Civil Action on April 14, 1999.

D. Columbia submitted or caused to be submitted claims for payment to "Carolina Alternatives," a North Carolina program funded in part by the federal Medicaid Program, 42 U.S.C. §§ 1396-1396v (1997).

E. The United States contends that it has certain civil claims against Columbia under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines, as specified below, for engaging in the following conduct (the

"Covered Conduct") :

From May 1994 to December 1996, Columbia, acting through Brunswick Hospital, submitted claims for the services of the outpatient day treatment and partial hospitalization programs of its Adolescent Psychiatric Unit to "Carolina Alternatives," a Medicaid-funded, managed care program of the State of North Carolina providing mental health and substance abuse treatment services to underprivileged adolescents. Such claims were false because Columbia:

(1) billed Carolina Alternatives for services provided by unqualified or under-qualified employees as if they were provided by qualified mental health professionals;

(2) billed Carolina Alternatives for services that were not clinically necessary, not ordered by treating physicians, and/or not rendered;

(3) double-billed Carolina Alternatives for certain therapies by failing to "unbundle" those therapies, i.e., to subtract amounts included in other claims for those same therapies; and

(4) falsified or failed to maintain patient medical and billing records for patients of its outpatient adolescent psychiatric programs as required by law and regulation.

F. The United States also contends that it has certain monetary and non-monetary administrative claims against Columbia

and Brunswick Hospital for the Covered Conduct under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs under 42 U.S.C. § 1320a-7(b), and the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a.

G. The State of North Carolina contends that it has certain monetary and non-monetary civil and administrative claims against Columbia for the Covered Conduct.

H. Columbia denies the contentions of the United States or North Carolina set forth in Paragraphs E, F and G, above.

I. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the Civil Action, the Parties have agreed to a negotiated settlement and compromise consistent with the terms of this 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. Within three days of the effective date of this Agreement, Columbia will pay to the United States and the State of North Carolina a total of \$1,250,000 (the "Settlement Amount") as follows:

(a) Columbia will pay \$812,500 to the United States by electronic funds transfer pursuant to written instructions provided by the United States; and

(b) Columbia will pay \$437,500 to the State of North Carolina by electronic funds transfer pursuant to written instructions provided by NC-DOJ, of which \$44,000 shall compensate NC-DOJ for investigative expenses incurred in connection with the Civil Action.

2. Within three days of the effective date of this Agreement, Columbia will pay to Relator's counsel \$80,000 for Relator's attorney's fees, expenses and costs by electronic funds transfer to Relator's counsel pursuant to written instructions provided by Relator's counsel.

3. Contingent upon the United States receiving the payment from Columbia set forth in Paragraph 1(a), above, and as soon thereafter as feasible, the United States agrees to pay to Relator \$138,125 (the "Relator Share of Proceeds") by electronic funds transfer to Relator pursuant to written instructions provided by Relator's counsel.

4. Subject to the exceptions in Paragraph 9, below, and conditioned upon Columbia's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release the Defendants from any civil or administrative monetary claim the United States has or may have 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, breach of contract and fraud, for the Covered Conduct.

5. After payment of the Settlement Amount as set forth in Paragraph 1, above, the United States will file a Stipulation of Dismissal consistent with the terms of the release set forth in Paragraph 4, above, (See Exhibit A, attached) dismissing, with prejudice, the allegations in the Civil Action against Columbia concerning the Covered Conduct and dismissing, without prejudice, the remaining allegations made in the Civil Action on its behalf.

6. In consideration of the obligations of Columbia set forth in this Agreement, conditioned upon Columbia's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking permissive exclusion of Defendants from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 9, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude any Defendant from the Medicare, Medicaid or other Federal health care program 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 civil claims have been reserved in Paragraph 9, below.

7. In consideration of the obligations of Columbia set forth in this Agreement, and conditioned upon Columbia's payment in

full of the Settlement Amount, the State of North Carolina agrees to release Defendants from any civil monetary claim the State has or may have at common law for the Covered Conduct, except as reserved in Paragraph 9, below, and as reserved in this Paragraph. Nothing in this Paragraph precludes the State of North Carolina from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 9, below.

8. In consideration of the obligations of Columbia set forth in this Agreement, conditioned upon Columbia's payment in full of the Settlement Amount, the State of North Carolina agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking permissive exclusion of Defendants from the North Carolina Medicaid Program under 10 North Carolina Administrative Code, Chapter 26 (Medical Assistance) for the Covered Conduct, except as reserved in Paragraph 9, below, and as reserved in this Paragraph. Nothing in this Paragraph precludes the State from taking action against Columbia in the event that Columbia is excluded by the federal government or against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 9, below.

9. 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 Columbia and Relator) are any and all of the following claims of the United States or the State of North Carolina:

(a) Any civil, criminal or administrative claims of the United States or the State of North Carolina arising under Title 26, U.S. Code (Internal Revenue Code) or N.C.G.S. Chapter 105 (the Revenue Act), respectively;

(b) Any claims for criminal liability;

(c) Except as explicitly stated in this Agreement, any claims for administrative liability, including mandatory exclusion from Federal health care programs;

(d) Any claims based upon liability for any conduct other than the Covered Conduct;

(e) Any claims based upon such obligations as are created by this Agreement;

(f) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Columbia;

(g) Any claims based on a failure to deliver items or services due;

(h) Any claims against any individuals other than the named Defendants; and

(i) Any civil or administrative claims against any named individual Defendant who, in connection with the Covered Conduct, receives written notification that he or she is the target of a criminal investigation (as defined in the United States Attorneys' Manual), is criminally indicted or charged, or is convicted, or who enters into a criminal plea agreement.



10. Conditioned upon receipt of the payment described in Paragraph 3, above, the Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, will release and forever discharge, and will be deemed to have released and forever discharged the United States, its officers, agents and employees, from any liability arising from the filing of the Civil Action, or any other subsection of 31 U.S.C. §§ 3730, including any liability for a share of the proceeds of this Settlement Agreement, of the Civil Action or of any other recovery by the United States. The Relator agrees and confirms that the Settlement Amount is fair, adequate and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) or otherwise.

11. Conditioned upon receipt of the payment described in Paragraph 2, above, the Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, will release and forever discharge, and will be deemed to have released and forever discharged Columbia, its officers, agents, employees, and directors from any liability to Relator for the conduct alleged in the Civil Action, and from any liability for expenses, attorneys' fees, and costs arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d). Relator will dismiss, with prejudice, all claims stated on her own behalf and in her capacity as a relator in the Civil Action.

12. Columbia waives and will not assert any defenses Columbia may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses 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 Settlement bars a remedy sought in such criminal prosecution or administrative action. Columbia agrees that this settlement is not punitive in purpose or effect. 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.

13. The Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by any State payer related to the Covered Conduct; and Columbia agrees not to resubmit to any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. Columbia 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. §§ 1395-1395ddd (1997) and 1396-1396v(1997), and the regulations promulgated thereunder) incurred by or on behalf of Columbia or Brunswick Hospital in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) Columbia's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and

any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees) (4) the negotiation of this Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employee Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by Columbia, and Columbia will 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 Columbia or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

15. Columbia further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in paragraph 14) 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 Columbia or any of its subsidiaries, and will 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. Columbia agrees that the United States will be entitled to recoup from Columbia any overpayment 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 calculation submitted by Columbia or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in paragraph 14) on Columbia or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

16. This Agreement is intended to be for the benefit of the Parties and the other named defendants to the Civil Action, only, and by this instrument the Parties do not release any claims against any other person or entity.

17. Columbia agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Columbia waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

18. Except as may be expressly provided to the contrary in this Agreement, each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. This Agreement is governed by the laws of the United States.

20. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

21. The undersigned individuals signing this Agreement on behalf of Columbia represent and warrant that they are authorized by Columbia to execute this Agreement. The undersigned individual signing this Agreement on behalf of Relator represents and warrant that he is authorized by Relator to execute this Agreement. The undersigned United States and North Carolina signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

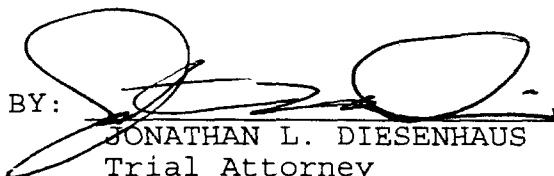
22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

23. This Agreement is binding on successors, heirs and assigns of the Parties.


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

THE UNITED STATES OF AMERICA

DATED: 7/29/99


BY:   
JONATHAN L. DIESENHAUS  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice

DATED: 7/27/99

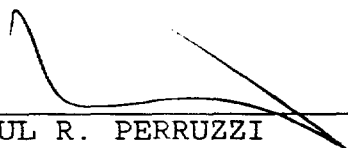
BY:   
LEWIS MORRIS  
Assistant Inspector General  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

THE STATE OF NORTH CAROLINA

DATED: 7/26/99

BY:   
CHRISTOPHER BREWER  
North Carolina Department of  
Justice  
Medicaid Investigations Unit

DATED: 7/26/99

BY:   
PAUL R. PERRUZZI  
Director, Division of  
Medical Assistance  
North Carolina Medicaid Program

COLUMBIA/HCA HEALTHCARE CORPORATION

DATED: 7-27-99

BY: Cathryn L. Sowers  
CATHRYN L. SOWERS  
Counsel  
Columbia/HCA Healthcare  
Corporation

DATED: 7/27/99

BY: Roger S. Goldman  
ROGER S. GOLDMAN  
Latham & Watkins  
Counsel for Columbia/HCA

KATHY ALDRICH - RELATOR

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
KATHY ALDRICH, R.N.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
NIALL B. MCCARTHY  
Counsel for Kathy Aldrich

COLUMBIA/HCA HEALTHCARE CORPORATION

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
CATHRYN L. SOWERS  
Counsel  
Columbia/HCA Healthcare  
Corporation

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
ROGER S. GOLDMAN  
Latham & Watkins  
Counsel for Columbia/HCA

KATHY ALDRICH - RELATOR

DATED: 7-27-99

BY: Kathy Aldrich  
KATHY ALDRICH, R.N.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
NIALL B. McCARTHY  
Counsel for Kathy Aldrich



COLUMBIA/HCA HEALTHCARE CORPORATION

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
CATHRYN L. SOWERS  
Counsel  
Columbia/HCA Healthcare  
Corporation

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
ROGER S. GOLDMAN  
Latham & Watkins  
Counsel for Columbia/HCA

KATHY ALDRICH - RELATOR

DATED: 7-27-99

BY: Kathy Aldrich RN  
KATHY ALDRICH, R.N.

DATED: 8/13/99

BY: [Signature]  
NIAHL B. MCCARTHY  
Counsel for Kathy Aldrich