

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Department of Health and Human Services (“HHS”), (collectively the “United States”); the State of Texas (“Texas”), and the Texas Health and Human Services Commission (“THHSC”); Defendants, Regency Nursing and Rehabilitation Centers, Inc. (“Regency”), and the Regency Settling Parties, as defined herein (“Regency Settling Parties”), through their authorized representatives.

II. PREAMBLE

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

- A. This Agreement is neither an admission of liability by the Regency Settling Parties nor a concession by the United States or Texas that their claims are not well founded.
- B. 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.
- C. At all times relevant hereto, Regency, was a corporation which served as the management agent for ten (10) affiliate nursing home and rehabilitation facilities. Regency corporate headquarters is located in Victoria, Texas.
- D. At all times relevant hereto, Regency managed the following ten (10) affiliate nursing home and rehabilitation centers: Cuero Nursing and Rehabilitation Center

located in Cuero, Texas; Edinburg Nursing and Rehabilitation Center located in Edinburg, Texas; Elgin Nursing and Rehabilitation Center located in Elgin, Texas; Harlingen Nursing and Rehabilitation Center located in Harlingen, Texas; Heritage Park Rehabilitation and Skilled Nursing Center located in Austin, Texas; Kingsville Nursing and Rehabilitation Center located in Kingsville, Texas; Pearsall Nursing and Rehabilitation Center (formerly known as South Texas Skilled Care Center), located in Pearsall, Texas; Port Lavaca Nursing and Rehabilitation Center located in Port Lavaca, Texas; Southbrooke Manor Nursing and Rehabilitation Center located in Edna, Texas; and Yoakum Nursing and Rehabilitation Center located in Yoakum, Texas, referred to collectively herein as the "Facilities." The owners of the Facilities are listed in Exhibit 1, Regency, those holding an ownership interest in Regency and/or the Facilities; current or former subsidiaries of Regency; and present or former employees, administrators, officers, directors, shareholders, and limited or general partners of Regency and/or the Facilities are hereinafter referred to as the "Regency Settling Parties."

E. The United States contends that the Regency Settling Parties 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 *et. seq.* and the Medicaid Program (Medicaid), 42 U.S.C. §1396 *et. seq.*.

F. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against the Regency Settling Parties for engaging in the following conduct during the period from June 1, 2000 through to and including December 31, 2004: (1) submitting or causing to be submitted claims for payment to Medicare and Medicaid for rehabilitation and skilled nursing services that were not reimbursable because: (a) patients were not qualified for

the services and/or (b) the services were not medically necessary; and (2) falsely certifying on their cost reports that services performed were in compliance with all applicable laws and regulations regarding the provision of rehabilitation and skilled nursing services as required by Medicare and Medicaid, (hereinafter referred to as the "Covered Conduct").

G. The United States also contends that it has certain administrative claims, as specified in Paragraphs 2 and 3 below, against the Regency Settling Parties for engaging in the Covered Conduct.

H. Texas contends that the Regency Settling Parties made erroneous claims and erroneous statements to Texas in connection with claims for reimbursement that the Regency Settling Parties submitted to Texas under the Medicaid Program (Title XIX of the Social Security Act, 42 U.S. C. §§1396, *et seq.*) in violation of the Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code Ann. §§36.001, *et seq.*, and 1 Tex. Admin. Code § 371.1617.

III. TERMS AND CONDITIONS

1. The Regency Settling Parties agree to pay to the United States \$4,000,000.00 (to be allocated between the United States and Texas) together with interest calculated at 2.125% per annum, for a total of \$4,049,583.33. The foregoing payment shall be paid in five (5) installments according to the payment schedule attached hereto as Exhibit 2. The payment schedule provides for the initial payment in the amount of \$ 835,416.67 to be made on or before August 1, 2009. The remaining four (4) payments will be made on or before the first day of each succeeding month, with the last installment being due on or before December 1, 2009. Interest at the rate of 2.125% will be charged on the total unpaid Settlement Amount starting on April 1, 2009, and on the remaining balance until fully and finally paid.

a. The Regency Settling Parties agree to pay the full Settlement Amounts noted in Paragraph 1 above to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Texas.

b. The entire principal balance of the Settlement Amount or any portion thereof, plus any interest accrued on the principal as of the date of any prepayment, may be prepaid without penalty. The prepayment of principal would reduce the interest expense accordingly.

2. Subject to the exceptions in Paragraph 3, below, in consideration of the obligations of the Regency Settling Parties in this Agreement, conditioned upon the Regency Settling Parties' full payment of the Settlement Amount, and subject to Paragraph 14 below, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the Regency Settling Parties from any civil or administrative monetary claim the United

States has or may have for the Covered Conduct described in Paragraph II. E above 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.

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 the following claims of the United States and Texas:

- 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 or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) 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;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability of individuals, including current or former directors, officers, employees, agents, or shareholders of Regency, except to the extent expressly released under Paragraph 2 above.

4. The Regency Settling Parties waive and shall not assert any defenses the Regency Settling Parties may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. The Regency Settling parties fully and finally release the United States and Texas, their agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Regency Settling Parties have asserted, could have asserted, or may assert in the future against the United States or Texas, their agencies, employees, servants, and agents, related to the Covered Conduct and the United States' or Texas' investigation and prosecution thereof.

6. 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 or Medicaid carrier or intermediary or any state payer, related to the Covered Conduct; and the Regency Settling Parties shall not resubmit to any Medicare or Medicaid carrier or intermediary or any state payor any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

7. The Regency Setting Defendants agree 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 *et. seq.* and 1396 *et. seq.*; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Regency Settling Parties in connection with the following shall be “Unallowable Costs” on government contracts and under the Medicare Program and Medicaid Program:

(1) The matters covered by this Agreement;

(2) The United States’ and Texas’ audit(s) and civil investigation(s) of the matters covered by this Agreement;

(3) The Regency Settling Parties’ investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees);

(4) The negotiation and performance of this Agreement; and

(5) The payment the Regency Settling Parties make to the United States pursuant to this Agreement, including costs and attorney’s fees.

b. Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by the Regency Settling Parties, and the Regency Settling Parties 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 the Regency Settling Parties to the Medicare,

Medicaid, TRICARE, or Federal Employees Health Benefits (hereafter referred to as "FEHBP"), Programs.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: The Regency Settling Parties further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by the Regency Settling Parties, 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. The Regency Settling Parties agree that the United States, at a minimum, shall be entitled to recoup from the Regency Settling Parties 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 the Regency Settling Parties on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on the Regency Settling Parties' 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 the Regency Settling Parties' books and

records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. Subject to the exceptions in Paragraph 3 above, in consideration of the obligations of the Regency Settling Parties in this Agreement, conditioned upon their full payment of the Settlement Amount, and subject to Paragraph 13 below, THHSC (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the Regency Settling Parties from any civil or administrative monetary claim THHSC has or may have for the Covered Conduct under the Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code Ann. §§36.001, *et seq.* or the common law theories of payment by mistake, unjust enrichment, and fraud.

9. In consideration of the obligations of the Regency Settling Parties in this Agreement and conditioned upon the Regency Settling Parties' full payment of the Settlement Amount, the THHSC agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking the exclusion of the Regency Settling Parties from Medicaid, under Chapter 32 of the Texas Human Resources Code and under 1 Texas Administrative Code (TAC) §§ 371.1653, 371.1655, or 371.1657 for the Covered Conduct. The THHSC expressly reserves all rights to comply with any statutory obligations to exclude the Regency Settling Parties from Medicaid, under Chapter 32 and/or Chapter 36 of the Texas Human Resources Code, Chapter 531 of the Texas Government Code, 1 TAC §§ 371.1653, and 371.1655 (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the THHSC from taking action against entities or persons, or for conduct and practices, for which claims have been reserved.

10. 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 11, below.

11. The Regency Settling Parties waive 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.

12. The Regency Settling Parties warrant that they have reviewed their financial situation and that together they currently are 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 valuable consideration given to the Regency Settling Parties, 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 that the Regency Settling Parties were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

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

b. If the Regency Settling Parties' 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 the THHSC, each at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against the Regency Settling Parties for the claims that would otherwise be covered by the releases provided in Paragraph 2 and 8 above. The Regency Settling Parties agree that (i) any such claims, actions, or proceedings brought by the United States or THHSC (including any proceedings to exclude the Regency Settling Parties 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 the Regency Settling Parties shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) the Regency Settling Parties 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 THHSC within sixty (60) calendar days of written notification to the Regency Settling Parties that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on June 1, 2000; and (iii) the United States has a valid claim against the Regency Settling Parties in the amount of \$4 million, and the United States may pursue its 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. The Regency Settling Parties acknowledge that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. 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.

15. The Regency Settling Parties represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

16. This Agreement is governed by the laws of the United States and the State of Texas. 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 Southern District of Texas.

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

18. The individuals signing this Agreement on behalf of the Regency Settling Parties represent and warrant that they are authorized by the Regency Settling Parties to execute this Agreement. The United States and Texas signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

20. This Agreement is binding on the Regency Settling Parties' successors, transferees, heirs, and assigns.

21. All Parties consent to the Parties' disclosure of this Agreement, and information about this Agreement, to the public.

22. This Agreement is effective on the date of signature of the last signatory to this Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
TIM JOHNSON
Acting United States Attorney
JILL O. VENEZIA
Assistant United States Attorney
United States Attorney's Office
Southern District of Texas

DATED: _____

BY: _____
SUSAN C. LYNCH
Attorney, Civil Division
Department of Justice
Post Office Box 261
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 353-7171
Facsimile: (202) 305-7797

THE STATE OF TEXAS

DATED: _____

BY: _____
BART BEVERS
Inspector General
Office of Inspector General
Texas Health & Human Services Commission

DATED: _____

BY: _____
ALBERT HAWKINS
Executive Commissioner
Texas Health and Human Services Commission

REGENCY NURSING and REHABILITATION CENTERS, Inc.- DEFENDANT

DATED: _____

BY: _____

HEBER S. LACERDA
President/CEO of Regency Nursing and
Rehabilitation Centers, Inc. and authorized agent for
the Regency Settling Parties as defined in Exhibit 1
to this Agreement

DATED: _____

BY: _____

DATED: _____

BY: _____

Settlement Agreement Exhibit 2
Terms of Payment

	Payment	2.125% Interest	Principal	Balance Notes
04/01/2009				4,000,000.00
08/01/2009	835,416.67	35,416.67	800,000.00	3,200,000.00 5 months interest
09/01/2009	805,666.67	5,666.67	800,000.00	2,400,000.00
10/01/2009	804,250.00	4,250.00	800,000.00	1,600,000.00
11/01/2009	802,833.33	2,833.33	800,000.00	800,000.00
12/01/2009	801,416.67	1,416.67	800,000.00	0.00
Total	4,049,583.33	49,583.33	4,000,000.00	