

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 25th day of October, 2006 by and among the United States of America acting through the United States Department of Justice (the “United States”), the Pennsylvania Department of Public Welfare (DPW), Lorraine A. Pittelli (the “Relator”) and Keystone Mercy Health Plan (“KMHP”) (the United States, DPW, the Relator and KMHP being hereinafter referred to collectively as the “Parties”), through their authorized representatives.

PREAMBLE

As a Preamble to this Settlement Agreement, the Parties state the following:

- A. KMHP is a Pennsylvania partnership that operates a managed care plan for Medical Assistance recipients in the Southeast Pennsylvania region pursuant to a contract with the Pennsylvania Department of Public Welfare (“DPW”);
- B. Under the DPW contract, KMHP was responsible *inter alia* (i) to pay healthcare providers for services rendered to individuals enrolled in KMHP’s plan (“Enrollees”), (ii) to maintain third party liability data concerning other programs and carriers obligated to pay for services provided to Enrollees and (iii) to perform coordination of benefits (“COB”), so that when applicable, other resources would be responsible for an appropriate part of the cost of such services;
- C. In furtherance of performing these COB responsibilities, managed care plans including KMHP recovered overpayments (“COB Recoveries”). The DPW contract

contained provisions that gave DPW the exclusive right to recoveries of certain overpayments if made after the expiration of specified stated time limits;

D. Whereas KMHP contends that the time limitations applied to COB Recoveries from third party resources such as other insurance companies, and not to recoveries from providers;

E. Whereas the United States contends that the time limitations also applied to COB Recoveries from both other insurance companies and providers;

F. Whereas on or about May 14, 2001, Lorraine A. Pittelli(hereinafter the "Relator"), filed a qui tam action in the United States District Court for the Eastern District of Pennsylvania captioned Civil Action No. 01-CV-2379 (Eastern District of Pennsylvania) (the "Relator Complaint"). On October 25, 2006 the United States filed a complaint in intervention (the "United States' Complaint"). (The Relator Complaint and the United States' Complaint being hereafter referred to, together, as the "Complaint.");

G. The United States of America contends that it has certain civil claims against KMHP under the False Claims Act, 31 U.S.C. § 3729-3733, 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, for engaging in the following conduct: During 1997 and 1998, and in connection with healthcare services rendered to KMHP enrollees during such years, KMHP made COB Recoveries at times beyond the allegedly applicable time frames and did not pay over such funds to DPW (the "Covered Conduct").

H. Whereas KMHP denies the contentions of the United States in paragraph G above and specifically denies any wrongdoing, inadequacy or liability in connection with the Complaint or the Covered Conduct;

I. The Parties agree that no provision of this Settlement Agreement or any consideration exchanged pursuant hereto constitutes an admission by KMHP that it engaged in, or violated any law or has any liability in connection with, the conduct alleged in the Complaint or the Covered Conduct;

J. The United States and the Relator have reached an agreement with respect to the Relator's claim of entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement;

K. The Relator and KMHP have reached an agreement with respect to the Relator's claim of entitlement under 31 U.S.C. § 3730(d) to reasonable attorneys' fees and costs;

L. The Parties wish to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties have reached a full and final settlement as set forth below:

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:

TERMS AND CONDITIONS

1. By executing this Agreement, KMHP agrees to pay to the United States the sum of Five Million Dollars (\$5,000,000) (the Settlement Amount) by electronic fund transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Pennsylvania in the following installments: (a) within 30 days of the effective date of this Agreement the amount of One Million Seven Hundred Thousand Dollars (\$1,700,000); (b) within 120 days of the effective date hereof, the amount of One Million Seven Hundred Thousand Dollars (\$1,700,000) and (c) within 180 days of the effective date hereof, the amount of One Million Six Hundred Thousand (\$1,600,000).

2. In consideration of the obligation of KMHP set forth in this agreement, the United States and DPW hereby agrees to fully and finally release KMHP and its predecessors, subsidiaries, partners, corporate parents and affiliates, successors and assigns and their respective current and former directors, officers, employees and attorneys from any civil monetary claims the United States or DPW have or may have under the False Claims Act, 31 U.S.C. § 3729-3733, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, contract, fraud, or under common law theories including those of unjust enrichment, mistake, disgorgement, restitution, recoupment, in connection with or related to the Covered Conduct.

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 (including KMHP and relator) are the following claims of the United States :
 - a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
 - b. Any criminal liability;
 - c. any administrative liability, including permissive or mandatory exclusion from Federal health care programs and Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812 and;
 - 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, including quality of goods;
4. Contingent upon the United States receiving the installments of the Settlement Amount set forth in paragraph 1 above from KMHP and as soon as feasible after such receipt, the United States agrees to pay to the Relator an amount totaling the amount of \$780,000. It is expressly understood and agreed that the United States in no way promises, guarantees nor is liable to the Relator for the collection or payment of any funds pursuant to this Agreement or the payment of the Relator's share except as provided herein for funds actually collected and received by the United States.
5. Pursuant to 31 U.S.C. § 3730(d)(2), (h) of the FCA, KMHP shall pay attorney's fees to the Relator in the amount of \$295,000. This amount shall

be paid as an electronic fund transfer to the Relator's attorneys (to be allocated in accordance with their instructions) no later than ten (10) business days after the Stipulations of Dismissal are filed as set forth in Paragraph 7.

6. The Relator agrees that this settlement of the Complaint is fair, adequate and reasonable under all the circumstances and that she will not challenge the settlement or this Agreement pursuant to 31 U.S.C. § 3730(c)(2)(B), and she expressly waives the opportunity for a hearing on any objection to this Agreement pursuant to 31 U.S.C. § 3730(c)(2)(B). Furthermore, the Relator for herself individually, and for her heirs, successors, attorneys, agents and assigns, fully and finally releases, waives, and forever discharges the United States and DPW, their agencies, employees, servants, and agents from any claims arising from or relating to 31 U.S.C § 3730, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1), from any claims arising from the filing of the Civil Action, and from any other claims for a share of the Settlement Amount, and in full settlement of any claims the Relator may have under this Agreement. Furthermore, the Relator warrants that she has not assigned and will not assign her claims with regard to any of allegations specified in the Complaint. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relator arising under Title 26, U.S. Code.
7. As part of this Agreement by all parties, (i) the United States will file a Notice of Intervention in the Civil Action identified in Paragraph F of the Preamble to this Agreement as to all claims relating to the Covered Conduct, (ii) the United States shall file a Stipulation of Dismissal with prejudice of the Complaint in the form of a Stipulation of Dismissal with Prejudice filed and attached hereto as Attachment A, and (iii) the Relator will file a Stipulation of

Dismissal with Prejudice as to KMHP in the form of the Stipulation of Dismissal with Prejudice attached hereto as Attachment B.

8. In consideration of complete fulfillment of KMHP's obligations as set forth in this Agreement, the Relator, and her attorneys for themselves, and for their heirs, successors, attorneys, agents and assigns, hereby fully and finally release KMHP and its predecessors, subsidiaries, corporate parents, partners and affiliates, successors and assigns and their current and former directors, officers, employees and attorneys from any and all actions and causes of action, claims and demands, suits, damages, costs, attorneys' fees, expenses, wages, benefits, debts, dues, accounts, bonds, covenants, contracts, agreements, and compensation whatsoever, in law or in equity, that the Relator and/or her attorneys have asserted or could have asserted against any of them, including but not limited to those related to or arising from the United States' investigation of the qui tam action, claims set forth in the Complaint, the Covered Conduct, claims relating to or arising under the False Claims Act, 31 U.S.C. §§ 3729-3733, or other federal or state statutes, contracts and/or common law whether the same are now known or unknown, accrued or unaccrued, contingent or non-contingent, from the beginning of time up to and including the date of the signing of this Agreement.
9. In consideration of complete fulfillment of Relator's obligations as set forth in this Agreement, KMHP, and its predecessors, subsidiaries, corporate parents, partners and affiliates, successors and assigns and their current and former directors, officers, employees and attorneys hereby fully and finally release Relator and her attorneys for themselves, and for their heirs, successors, attorneys, agents and assigns from any and all actions and causes of action, claims and demands, suits, damages, costs, attorneys' fees, expenses, wages,

benefits, debts, dues, accounts, bonds, covenants, contracts, agreements, and compensation whatsoever, in law or in equity, that the KMHP and its predecessors, subsidiaries, corporate parents, partners and affiliates, successors and assigns and their current and former directors, officers, employees and attorneys has asserted or could have asserted against any of them, including but not limited to those related to or arising from the United States' investigation of the qui tam action, claims set forth in the Complaint, the Covered Conduct, claims relating to or arising under the False Claims Act, 31 U.S.C. §§ 3729-3733, or other federal or state statutes, contracts and/or common law whether the same are now known or unknown, accrued or unaccrued, contingent or non-contingent, from the beginning

10. KMHP fully and finally releases the United States and DPW, their agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which KMHP has asserted, could have asserted, or may assert in the future against the United States and DPW, their agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. KMHP 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. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of KMHP, 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 Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

(1) the matters covered by this Agreement

(2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement,

(3) KMHP's 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,

(5) the payment KMHP makes to the United States pursuant to this Agreement and any payments that KMHP may make to relators, including costs and attorneys fees, and

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by KMHP, and KMHP 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 KMHP or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: KMHP further agrees that within 90 days of the Effective Date of this Agreement it shall 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 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 KMHP 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. KMHP agrees that the United States, at a minimum, shall be entitled to recoup from KMHP 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 KMHP or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on KMHP 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 KMHP's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

12. KMHP 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

13. KMHP 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 will 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 KMHP 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 and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which KMHP was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).
14. If within 91 days of the Effective Date of this Agreement or of any payment made hereunder, KMHP 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 KMHP's debts, or seeking to adjudicate KMHP as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for KMHP or for all or any substantial part of KMHP's assets, KMHP agrees as follows:
 - a. KMHP's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and KMHP will not argue or otherwise take the position in any such case, proceeding, or action that: (i) KMHP's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) KMHP was 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 KMHP.

b. If KMHP'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, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against KMHP for the claims that would otherwise be covered by the releases provided in Paragraph 2. KMHP agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude KMHP 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 proceeding described in the first clause of this Paragraph, and that KMHP will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) KMHP will 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 which are brought by the United States within 60 calendar days of written notification to KMHP that the releases have been rescinded pursuant to this Paragraph, and (iii) the United States has a valid claim against KMHP in the amount of \$5,000,000, 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.

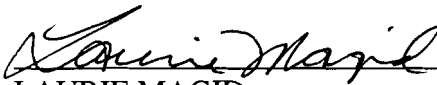
c. KMHP acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

15. 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.
16. KMHP represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
17. Relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
18. 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 will be the United States District Court for the Eastern District of Pennsylvania.
19. The individual(s) signing this Agreement on behalf of KMHP represent(s) and warrant that he/she/they is/are authorized by KMHP to execute this Agreement. The Relator represents and warrants that there is no legal restriction on her execution of, or impairment on the enforceability of this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.
20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.
21. This Agreement is binding on KMHP's successors, transferees, heirs, and assigns.

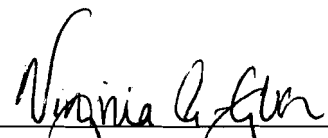
22. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
23. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

UNITED STATES OF AMERICA

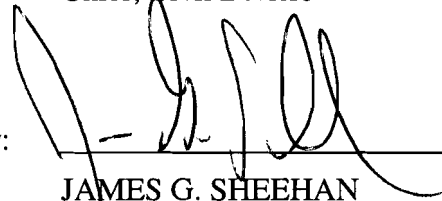
Date: Oct. 25, 2006

By: 
LAURIE MAGID
Acting United States Attorney

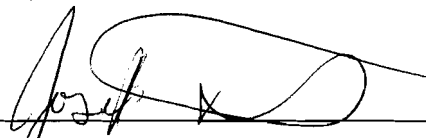
Date: 10/25/06

By: 
VIRGINIA A. GIBSON
Assistant United States Attorney
Chief, Civil Division

Date: 10/25/06

By: 
JAMES G. SHEEHAN
Associate United States Attorney
Civil Division

Date: 10/25/06

By: 
JOSEPH TRAUTWEIN
Assistant United States Attorney

PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

Date: 10-20-06

By: Kathleen Grogan
KATHLEEN GROGAN

Senior Assistant Counsel
Office of General Counsel

RELATOR

Dated: 10/20/2006

By: Lorraine A. Pittelli
Lorraine A. Pittelli

Dated: 10/20/2006

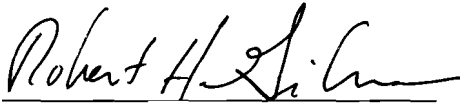
By: Howard Bruce Klein
Howard Bruce Klein, Esquire
COUNSEL FOR THE RELATOR

Dated: 10/20/2006

By: Bruce J. Goldstein
Bruce J. Goldstein, Esquire
COUNSEL FOR THE RELATOR

KEYSTONE MERCY HEALTH PLAN

Date: 10/25/06

By: 
Robert H. Gilman
Senior Vice President
and General Counsel