

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 18th day of September, 1994, by and among the United States of America, acting through its Department of Justice, the United States Attorney for the District of Massachusetts, the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG"), Mary Jane Backman, and Blue Cross and Blue Shield of Massachusetts, Inc. ("BCBSM"), a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business in Boston, Massachusetts (hereinafter jointly referred to as "the parties").

PREAMBLE

A. WHEREAS, BCBSM has contracted with the Health Care Financing Administration ("HCFA") to be the Medicare Part B claims administrator for eligible Medicare beneficiaries obtaining Medicare covered services in the State of Massachusetts and the Tri-State Region including Maine, New Hampshire, and Vermont, and has, as a Medicare Carrier, processed Medicare Part B claims submitted to it by Medicare beneficiaries, their physicians, or other health care supplier assignees;

B. WHEREAS, on June 16, 1993, Mary Jane Backman filed a

Complaint (the "Complaint") in the United States District Court for the District of Massachusetts on behalf of the United States against BCBSM, United States ex rel. Mary Jane Backman v. Blue Cross and Blue Shield of Massachusetts, Inc., Civil Action No. 93-11321-DPW, alleging that BCBSM violated the civil False Claims Act, 31 U.S.C. §§ 3729-3733;

C. WHEREAS, on May 9, 1994, the United States, pursuant to 31 U.S.C. § 3730(b)(4)(A), elected to intervene in United States ex rel. Mary Jane Backman v. Blue Cross & Blue Shield of Massachusetts, Inc.;

D. WHEREAS, on November 16, 1993, BCBSM submitted to the United States a report of its internal review of practices, procedures and employee conduct in the Claims and Reviews Departments of the Medicare B Program of its Government Programs Division;

E. WHEREAS, on February 17, 1994, BCBSM submitted to the United States a supplemental report of its internal review of the Medicare B Program of its Government Programs Division (the November 16, 1993 Internal Review Report and the February 17, 1994 Supplemental Internal Review Report are collectively referred to herein as the "Internal Review Reports");

F. WHEREAS, the United States alleges that BCBSM submitted or caused to be submitted to the United States claims for payment under Medicare Part B that give rise to liability under the False Claims Act and/or other statutes or common law doctrines, resulting from the conduct alleged in the Complaint and/or

described in BCBSM's Internal Review Reports;

G. WHEREAS, the United States also alleges that the United States reimbursed BCBSM for improperly inflated administrative costs incurred in the processing of Medicare Part B claims;

H. WHEREAS, BCBSM denies the allegations in the Complaint and the allegations by the United States, except as otherwise expressly set forth in its Internal Review Reports;

I. WHEREAS, BCBSM and HCFA continue to be parties to a contract involving the administration of Medicare Part B claims and BCBSM and HCFA have certain ongoing responsibilities under that contract; and

J. WHEREAS, the parties, to avoid further litigation, mutually desire to reach a full and final compromise and settlement as set forth hereinafter:

TERMS AND CONDITIONS

NOW THEREFORE, in reliance on the representations contained herein, and in consideration of the mutual promises, covenants and obligations in this Settlement Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Upon execution of this Settlement Agreement by the parties and upon entry by the Court of an Order dismissing the Complaint with prejudice, BCBSM shall pay to the United States the sum of \$2,750,000.00 (two million seven hundred fifty thousand and no/100 dollars) (the "Settlement Amount"). BCBSM shall satisfy this obligation by making payment of the Settlement

Amount by electronic transfer to the order of the Treasurer of the United States within three (3) working days after entry by the Court of an Order dismissing the United States' claims as provided for in this paragraph.

2. After execution of this Settlement Agreement by the parties and within 120 days of the entry by the Court of an Order dismissing the Complaint with prejudice as described in paragraph 1 above, BCBSM will implement a plan for increasing resources devoted to the elimination of fraud and abuse by providers of Medicare services, as set forth in the document entitled Medicare Fraud and Abuse Program Improvement Plan dated September 21, 1994, which is attached to this Settlement Agreement as Exhibit A and is incorporated by reference herein.

3. Immediately upon the full execution of this Settlement Agreement, the parties hereto shall execute and, in a timely manner, file with the court a stipulation or joint motion for dismissal of the Complaint with prejudice.

4. Upon fulfillment of the conditions in paragraph 1 above, and in consideration of the payment referred to in paragraph 1 above, the United States hereby releases, and shall be deemed to have released, BCBSM, its affiliates, divisions or subsidiaries, their successors and assigns, and any of their current or former directors, officers, employees, and agents, from any civil monetary claim arising from BCBSM's participation in the Medicare Part B program as a Medicare Carrier that the United States has or may have under the False Claims Act, 31

U.S.C. §§ 3729-3733 (as amended), the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, or under the common law theories of fraud, payment by mistake, unjust enrichment and breach of contract, arising out of the transactions and occurrences alleged in the Complaint or described in BCBSM's Internal Review Reports, provided, however, that this paragraph 4 is expressly subject to the following paragraphs 5 through 8.

5. This Settlement Agreement is not intended to relieve and shall not be construed to relieve any liability BCBSM has or may have under the Internal Revenue Laws, Title 26 of the United States Code, or regulations promulgated thereunder.

6. This Settlement Agreement is not intended to affect and shall not be construed to affect the suspension and debarment rights, if any, of any federal agency, except as expressly stated in paragraph 9 herein.

7. Without in any way limiting the terms of the releases set forth herein, and expressly subject thereto, it is expressly agreed between BCBSM and the United States that as long as BCBSM is a Medicare contractor, BCBSM is bound by all rules or regulations that govern such Medicare contractors. This Settlement Agreement is not intended to affect and shall not be construed to affect any obligation imposed by said rules or regulations.

8. This Settlement Agreement is not intended to affect and shall not be construed to affect the respective rights and

obligations of BCBSM and HCFA under the contract between BCBSM and HCFA for the administration of Part B of the Medicare Program in the State of Massachusetts except as expressly stated in paragraph 9 herein.

9. The United States Department of Health and Human Services shall not institute or maintain any administrative claim or action against BCBSM, its divisions or subsidiaries, and any of their current directors, officers, employees, and agents for the conduct alleged in the Complaint or described in the Internal Review Reports seeking (a) suspension, debarment, or any exclusion from the Medicare program; or (b) penalties under 42 U.S.C. §§ 1320a-7(a) or 1320a-7(b), except as to current directors, officers, employees, and agents where mandated by law as the result of a criminal conviction.

10. BCBSM agrees to treat as unallowable costs for government contracting purposes all costs (as defined in the Federal Acquisition Regulations ("FAR") 31.205-47(a)) incurred by or on behalf of BCBSM or any of its current or former officers, directors, agents or employees, in connection with: (a) the matters covered by this Settlement Agreement; (b) the Government's investigation of the matters covered by this Settlement Agreement; (c) BCBSM's investigation, defense of the matters, and corrective actions in response to the government's investigation of the matters covered by this Settlement Agreement or alleged in the Complaint; (d) the negotiation of this Settlement Agreement; (e) all payments made pursuant to the terms

of this Settlement Agreement; and (f) all payments made by BCBSM in connection with the investigation, defense, and settlement of a proceeding commenced by Mary Jane Backman before the Maine Human Rights Commission under Docket #E93-0625 (the "MHRC Proceeding"). Any costs incurred by BCBSM in connection with the matters covered by this Settlement Agreement other than those identified in subparagraphs (a) through (f) shall not be deemed unallowable by the operation of this paragraph. In addition, otherwise allowable costs to implement the plan referenced in paragraph 2 and attached hereto as Exhibit A shall not be deemed unallowable by operation of this paragraph.

11. Upon fulfillment of the conditions in paragraph 1 above, the United States shall pay Mary Jane Backman, in satisfaction of any rights held by her pursuant to 31 U.S.C. § 3730(d) for an award from the proceeds of the Backman qui tam action, the amount of \$550,000 (five hundred fifty thousand dollars). This amount shall be paid to Mary Jane Backman in the form of a United States Treasury check made jointly payable to the order of Mary Jane Backman and Hill & Barlow, P.C., and delivered to the undersigned attorney for Mary Jane Backman reasonably promptly after receipt by the United States Department of Justice of the Settlement Amount.

12. Upon fulfillment of the conditions in paragraphs 1 and 11 above, Mary Jane Backman hereby waives any and all claims that she may have for an award and for costs, expenses and attorneys' fees under 31 U.S.C. § 3730(d).

13. This Settlement Agreement shall be binding upon the parties, their successors and assigns.

14. Each person who signs this Settlement Agreement in a representative capacity warrants that he or she is duly authorized to do so. BCBSM, by and through its undersigned authorized officer, certifies and attests that its Board of Directors has authorized its execution of this Settlement Agreement.

15. BCBSM shall have no further civil claim or cause of action against the United States arising out of the matters set forth in the Complaint except for such obligations as are created by this Settlement Agreement.

16. Mary Jane Backman hereby waives, releases and forever discharges the United States and BCBSM, its affiliates, divisions, or subdivisions, their successors or assigns, and any of their current or former directors, officers, employees and agents, from any claim pursuant to 31 U.S.C. § 3730(d) for an award from the proceeds of the Backman qui tam action, except for such obligations as may arise pursuant to the terms of this Settlement Agreement, and additionally with respect to BCBSM, except pursuant to the terms of a certain settlement agreement dated as of the date hereof entered into between her and BCBSM relating to the MHRC Proceeding. Mary Jane Backman and her counsel agree to refrain from objecting to the terms of this Settlement Agreement in any forum. The United States and its counsel agree to refrain from objecting to the terms of the

settlement of the MHRC Proceeding.

17. Mary Jane Backman and BCBSM have executed and delivered to each other a mutual release in the form attached hereto as Exhibit B and incorporated by reference herein.

18. This Settlement Agreement is intended to be for the benefit of the United States, Mary Jane Backman, and BCBSM and its affiliates, divisions or subsidiaries, its successors and assigns, and any of its current or former directors, officers, employees and agents only. By this instrument the parties hereto do not intend to create a benefit for any other party or entity, and do not waive, compromise, or release their claims or causes of action against any other person or entity.

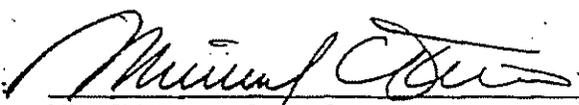
19. It is expressly understood and agreed between the parties that this Settlement Agreement is made in compromise of disputed claims. This Settlement Agreement shall not be construed or used as an admission of wrongdoing on the part of BCBSM.

20. This Settlement Agreement is executed in six counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. The parties agree that this Settlement Agreement may not be altered, amended, modified or otherwise changed except by a writing duly executed by BCBSM, Mary Jane Backman and the United States Department of Justice.

UNITED STATES OF AMERICA

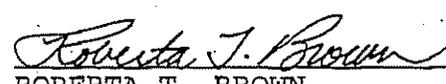
FRANK W. HUNGER
ASSISTANT ATTORNEY GENERAL

DATED: 9/28/94

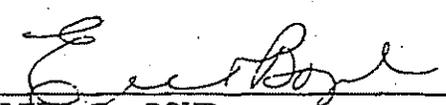
By: 
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KAREN F. GREEN
DEPUTY U.S. ATTORNEY

DATED: 9/28/94

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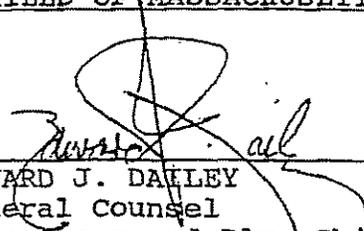
DATED: 9/28/94

By: 
EILEEN T. BOYD
Assistant Inspector General
Office of Civil Fraud and
Administrative Remedies
United States Department of
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330 Independence Avenue, S.W.
Washington, D.C. 20201

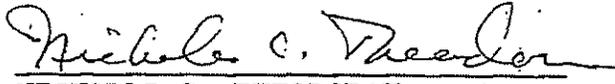
BLUE CROSS AND BLUE SHIELD OF MASSACHUSETTS

DATED: 07/28/94

By:


EDWARD J. DARLEY
General Counsel
Blue Cross and Blue Shield of
Massachusetts, Inc.

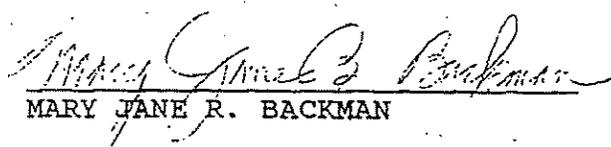
DATED: September 28, 1994 By:


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MARY JANE R. BACKMAN

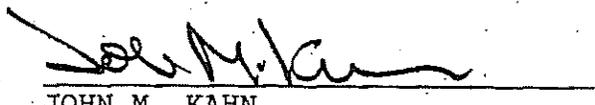
DATED: September 28, 1994

By:


MARY JANE R. BACKMAN

DATED: Sept 28, 1994

By:


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