

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("the Agreement"), is entered into this 10<sup>th</sup> day of July, 1998, by and among the UNITED STATES OF AMERICA, acting by and through the Department of Justice and the Office of Inspector General of the United States Department of Health and Human Services ("HHS-OIG") (together "the United States"); and THE FULTON-DEKALB HOSPITAL AUTHORITY d/b/a GRADY HOSPITAL ("Grady"). Collectively, all of the above will be referred to as "the Parties."

### PREAMBLE

A. Grady is one of the Southeast's largest public hospital systems and is taxpayer funded. Grady operates under a state charter to provide medical care for the indigent and emergency health care for Fulton and DeKalb counties in Atlanta, Georgia.

B. The Medicaid program (codified in 42 U.S.C. § 1396 et seq., Title XIX of the Social Security Act, as amended) was created for the purpose of providing federal financial assistance to states that choose to reimburse certain costs of medical treatment for persons who qualify under state eligibility guidelines. The State of Georgia, through its Department of Medical Assistance ("DMA"), participates in the Medicaid program. The United States Department of Health and Human Services, Health Care Financing Administration ("HCFA") establishes minimum federal guidelines for the administration of the Medicaid programs and administers Medicaid on the federal level. Although the Medicaid program is administered by states, it is jointly financed by federal and state governments.

C. At all times relevant to this Agreement, Grady has been a participating Medicaid provider. As a participating Medicaid provider, Grady has dispensed prescription drugs to Medicaid recipients.

D. Among the rules, regulations, and other policies which enrolled Medicaid providers of prescription drugs in the State of Georgia have agreed to follow, during the

period of time relevant to this Agreement, is the requirement that Medicaid providers bill DMA an amount consistent with the formulae or guidelines delineated by DMA's policies and procedures.

E. On May 20, 1996, Craig Heyrman, a former Grady employee, in his individual capacity and as a relator on behalf of the United States, filed a civil action, under seal, in the United States District Court for the Northern District of Georgia, under the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730. That qui tam lawsuit is captioned United States ex rel. Craig Heyrman v. Fulton-DeKalb Hospital Authority d/b/a/ Grady Hospital, and is docketed as Civil Action No. 1:96-CV-1251-CAM (N.D. Ga.) (the "Lawsuit").

F. In his qui tam Lawsuit, Heyrman alleged that, during periods from the spring of 1984 through December 31, 1994, Grady submitted to DMA claims for payment of fees for the dispensing of prescription drugs to Medicaid recipients that were in excess of the amounts that could be claimed properly, under policies and procedures established by HCFA and DMA, for dispensing prescription drugs to Medicaid recipients. Heyrman sought various damages, including attorneys' fees and costs, as provided by 31 U.S.C. § 3730(d).

G. Grady denies all the allegations of relator Heyrman that are set forth in Heyrman's qui tam Complaint and denies that it has any liability relating to these allegations. Furthermore, Grady denies that it is a "person" as that term is used in 31 U.S.C. § 3729(a) and denies that it is a proper defendant under the Civil False Claims Act, 31 U.S.C. §§ 3729 et seq.

H. The Parties mutually desire to compromise and settle all claims between them in the Lawsuit and, thereby, avoid the costs and disruption of continued litigation.

I. This Agreement does not constitute evidence, or an admission by any Party, of any liability or wrongful conduct.

ACCORDINGLY, in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

### OBLIGATIONS OF GRADY

1. Payment to the United States. Grady shall pay the United States the sum of \$4,288,494 (the "Settlement Amount") following the final execution of this Agreement by all Parties. In the event this Agreement is executed after May 1, 1998, Grady shall pay to the United States interest on the Settlement Amount beginning May 1, 1998, in an amount equal to the interest rate of four and six tenths (4.6) percent per annum compounded monthly.

2. Manner and Method of Payment. The payment provided for in subparagraph 1 shall be by an electronic transfer to the United States Attorney's Office for the Northern District of Georgia, pursuant to instructions provided by the United States.

3. Integrity Agreement. As part of its ongoing compliance efforts, Grady agrees to implement the integrity requirements pursuant to its agreement with the HHS-OIG, a copy of which is attached to this Agreement as Exhibit A.

### OBLIGATIONS OF THE UNITED STATES

4. In consideration of this Agreement, including the terms of payment and other obligations set forth herein, the United States: shall intervene in the civil action of U.S. ex rel. Craig Heyrman v. Fulton-DeKalb Hospital Authority, d/b/a Grady Hospital, docketed as Civil Action No. 1:96-c.v.-1251-CAM in the United States District Court for the Northern District of Georgia in its entirety; thereafter shall file a Stipulation of Dismissal, with prejudice, of that action, which shall be signed by counsel for the United States and relator Craig Heyrman; and release Grady and any of its officers, directors, employees, agents, subsidiaries, predecessors, successors and assigns, from any civil or administrative monetary claims the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-33, as amended; 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 fraud, payment by mistake of fact or unjust enrichment for the submission by Grady, to the Georgia DMA, of claims for the payment of fees for the dispensing of prescription drugs to Medicaid recipients, during any period between March 1, 1984, through December 31, 1994.

5. In consideration of this Agreement, including the terms of payment and other obligations set forth herein, HHS-OIG agrees to refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion of Grady from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f) (as amended)), under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the submission by Grady, to the Georgia DMA, of claims for the payment of fees for the dispensing of prescription drugs to Medicaid recipients during any period between March 1, 1984, through December 31, 1994. HHS-OIG expressly reserves all rights to comply with any statutory obligations to exclude Grady and any of its officers, directors, employees, agents, subsidiaries, predecessors, successors and assigns from the Medicare, Medicaid, or other Federal health care program under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the submission by Grady, to the Georgia DMA, of claims for the payment of fees for the dispensing of prescription drugs to Medicaid recipients during any period between March 1, 1984, through December 31, 1994.

6. Notwithstanding any term of this Agreement specifically reserved and excluded from the scope and terms of this release and Agreement are any and all:

- a. Claims that may arise under Title 26, United States Code, Internal Revenue Service Code, or Internal Revenue Service regulations;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the conduct described in Paragraph G; or
- e. Claims relating to obligations created by this Agreement.

#### MISCELLANEOUS PROVISIONS

7. Unallowable Costs. 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 Grady in connection with:

(a) the matters covered by this Agreement;

(b) the government's investigations of the allegations which are the subject of this Agreement;

(c) any of Grady's investigation, defense and corrective actions with respect to matters specifically covered by this Agreement (including attorney's fees);

(d) the negotiation of this Agreement; and

(e) the payments made to the United States pursuant to this Agreement;

shall be unallowable costs for government contract accounting purposes and for purposes of seeking reimbursement, through cost reports or otherwise, from the Medicaid Program, under Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395, *et seq.*, which establishes the Health Insurance for the Aged and Disabled Program, popularly known as the Medicare 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 Grady, and Grady 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 Grady or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

The classification of costs incurred by Grady in its implementation of the integrity requirements established under its Integrity Agreement with HHS-OIG, a copy of which is attached to this Agreement as Exhibit A, shall be controlled by the terms of that Integrity Agreement.

Grady further agrees that within sixty (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 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 Grady 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. Grady agrees that the United States will be entitled to recoup from Grady 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 calculations submitted by Grady or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on Grady 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.

8. Grady waives and will not assert any defenses Grady may have to any criminal prosecution or administrative action relating to the submission by Grady, to the Georgia DMA, of claims for the payment of fees for the dispensing of prescription drugs to Medicaid recipients during any period between March 1, 1984, through December 31, 1994, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or the holdings or principles set forth in Hudson v. United States, 118 S.Ct. 488 (1997), and Austin v. United States, 509 U.S. 602 (1993), and agrees that the amount that Grady has agreed to pay under the terms of this Agreement, as described in paragraph 1, supra, is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

9. Venue for Enforcement, Interpretation or Dispute Resolution. Should any action to enforce or interpret this 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 Northern District of Georgia.

10. Capacity to Execute Agreement. Each Party signing this Agreement in a representative capacity warrants that he or she is duly authorized to do so.

11. Entire Agreement. This Agreement, with the exception of the Corporate Integrity Agreement that shall be drafted and executed by Grady and HHS-OIG, constitutes the entire agreement between the Parties with respect to the matters contained herein, and may not be modified except by a writing signed by all Parties hereto, except that the Corporate Integrity Agreement may be modified by written agreement between only Grady and HHS-OIG. No other additional promises, conditions or agreements have been entered into other than those stated in this Agreement.

12. Effective Date. This Agreement shall be effective on the date of signing by all the parties.

UNITED STATES OF AMERICA

RICHARD H. DEANE, JR.  
UNITED STATES ATTORNEY


Date: 7/10/98



DANIEL A. CALDWELL  
ASSISTANT U.S. ATTORNEY  
Georgia Bar No. 102510

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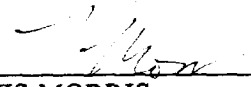
Date: 6/25/98



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**FULTON-DEKALB HOSPITAL AUTHORITY**  
**D/B/A GRADY HOSPITAL**

Date: 7/07/98

  
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**ROBERT L. BROWN, CHAIRMAN**  
**BOARD OF TRUSTEES**