

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), acting through the Civil Division of the United States Department of Justice, the United States Attorney for the Middle District of Tennessee, the Office of Inspector General of the Department of Health and Human Services ("OIG-HHS"); and the TRICARE Management Activity ("TMA") (formerly the Office of Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), through its General Counsel; Kershaw County Medical Center ("Kershaw"); and the qui tam relator, Barry Steeley ("Relator") (the United States and all of the foregoing persons or entities are hereafter collectively referred to as "the Parties"), through their authorized representatives.

### II. PREAMBLE

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

A. Kershaw is a provider of hospital services located at 1315 Robert Street, Camden, South Carolina.

B. The United States contends that Kershaw 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. §§ 1395-1395ggg and the TRICARE Program (also known as the Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), 10 U.S.C. §§ 1071-1110 for the inpatient treatment of Medicare and CHAMPUS beneficiaries.

C. On or around August 25, 1997, Barry Steeley (the "Relator") filed a qui tam complaint under seal alleging violations of the False Claims Act by Kershaw in the case styled United States ex rel. Barry Steeley v. Birman Managed Care, Inc., et al., Civil Action No. 3:97-0893 (M.D. Tenn.) (the "Qui Tam Action").

D. Medicare and CHAMPUS payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as determined by the hospital.

E. The Medicare and CHAMPUS Programs rely upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.<sup>1</sup>

F. The United States investigated the allegations in the Qui Tam Action regarding inpatient payment claims submitted to Medicare by Kershaw for patients with the principal diagnosis codes for Diagnostic Related Group (DRG) 79 (respiratory infections & inflammations age > 17 w/ cc). The United States also investigated the allegations in the Qui Tam Action regarding inpatient payment claims submitted to CHAMPUS by Kershaw for patients with the principal diagnosis codes for DRG 14 (specific cerebrovascular disorders except TIA), 132 (atherosclerosis w/ cc), and 296 (nutritional & misc metabolic disorders age > 17 w/ cc).

G. This Agreement governs the Relator's claims against Kershaw based on the conduct alleged in the Qui Tam Action, and the civil claims the United States contends that it has against Kershaw under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in Paragraph 4 below, for engaging in the following alleged conduct during the period from December 2, 1996 through April 3, 1998 with regard to

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<sup>1</sup> International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM").

Medicare claims and January 1, 1993 through December 31, 1997 with regard to the CHAMPUS claims (the "Covered Period"): (i) Kershaw submitted or caused to be submitted claims to Medicare with the principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 w/ cc) that were not supported by the corresponding medical records; and (ii) Kershaw submitted or caused to be submitted claims to CHAMPUS for patients with the principal diagnosis codes for DRG 14 (specific cerebrovascular disorders except TIA), 132 (atherosclerosis w/ cc), and 296 (nutritional & misc metabolic disorders age > 17 w/ cc) that were not supported by the corresponding medical records. The United States alleges that, as a result of these claims, Kershaw received payments from Medicare and CHAMPUS to which it was not entitled. The conduct referenced in this paragraph is hereinafter referred to as the "Covered Conduct."

H. Kershaw has provided documents and information in response to the United States' investigation of the Covered Conduct, including patient files for which claims were submitted (i) to the Medicare Program for patients with the principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 w/ cc); and (ii) to CHAMPUS for patients with the principal diagnosis codes for DRG 14 (specific cerebrovascular disorders except TIA), 132 (atherosclerosis w/ cc), and 296 (nutritional & misc metabolic disorders age > 17 w/ cc). Kershaw represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. Kershaw does not admit the contentions of the United States as set forth in Paragraph G above and as set forth in the Qui Tam Action.

J. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

### 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. Immediately upon execution of this Agreement by all Parties, Kershaw shall pay to the United States \$200,000 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Kershaw agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Kershaw shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Kershaw agrees to furnish to the United States complete and unredacted copies of all documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct which it has undertaken, or which has been performed by its counsel or other agent, and waives any rights or privileges which otherwise may apply to such production.

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

4. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of Kershaw set forth in this Agreement, conditioned upon Kershaw's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in Paragraph 3), agrees to release Kershaw 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. The United States expressly reserves any claims against any entities and individuals other than Kershaw.

5. The OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Kershaw, and/or its officers, directors, and employees from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

6. 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 Kershaw and the Relator) are any and all of the following:

(1) Any civil, criminal, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

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

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any liability based upon such obligations as are created by this Agreement;

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

(7) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(8) Any liability based on a failure to deliver items or services billed; and

(9) Any liability of individuals, including officers and employees.

7. Kershaw waives and will not assert any defenses it 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 or Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Kershaw agrees that this Agreement 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.

8. The Settlement Amount that Kershaw must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary, or any state payer, related to the Covered Conduct; and Kershaw agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

9. Kershaw agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation (FAR), 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 Kershaw, 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 investigations(s) of the matters covered by this Agreement,
- (3) Kershaw's investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and investigation 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 Kershaw makes to the United States pursuant to this Agreement and any payments that Kershaw may make to Relator, including costs and attorneys fees.

However, nothing in this Paragraph 9 affects the status of costs that are not allowable based on any other authority applicable to Kershaw. (All costs described or set forth in this Paragraph 9(a) are hereafter, "unallowable costs").

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



(c) Treatment of Unallowable Costs Previously Submitted for

Payment: Kershaw 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 Kershaw 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. Kershaw agrees that the United States, at a minimum, shall be entitled to recoup from Kershaw 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 payment 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 Kershaw or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Kershaw 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.

10. This Agreement is intended to be for the benefit of the Parties, and their successors and assigns, only and by this instrument the Parties do not release any claims against any other person or entity (other than the Kershaw). This agreement is not intended to be for the benefit of Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, M.D., and by this instrument the United States does not release any claims against Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, M.D.

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

12. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the United States District Court for the Middle District of Tennessee that (a) the Parties have reached a settlement; and (b) pursuant to this settlement the Parties have stipulated that: (i) the Relator dismisses all claims in the Qui Tam Action with prejudice as to him, and (ii) the United States dismisses with prejudice only those claims in the Qui Tam Action related to the Covered Conduct against Kershaw, and the claims in the Qui Tam Action unrelated to the Covered Conduct are dismissed without prejudice as to the United States.

13. Subject to the exceptions in Paragraph 6 above, in consideration of the obligations of Kershaw in this Agreement, conditioned upon Kershaw's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release Kershaw from any civil monetary claim the United

States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

14. Conditioned upon receipt of \$10,500 from Kershaw for attorney's fees and costs under 31 U.S.C. § 3730(d), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release Kershaw from any liability to Relator arising from the filing of the Qui Tam Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

15. Conditioned upon Kershaw's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to 17% of the Settlement Amount. The United States shall pay Relator this amount within a reasonable time after Kershaw pays the Settlement Amount. It is expressly understood and agreed that the United States in no way promises, guarantees, nor is liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment or any Relator's share payments except as provided herein for funds actually collected and received by the United States.

16. On receipt of the payment described in Paragraph 15 above, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in connection with this Qui Tam Action, or arising from the filing of the Qui Tam Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Qui Tam Action. The relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

17. Except as provided in Paragraph 14, the Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Kershaw represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. 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 shall be the United States District Court for the Middle District of Tennessee.

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

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

22. The undersigned individuals signing this Agreement on behalf of Kershaw represent and warrant that they are authorized to execute this Agreement on behalf of Kershaw. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement. The Relator represents that he has the capacity to execute this Agreement, and that he has read it in its entirety.


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

24. This Agreement is binding on the successors, transferees, and assigns of the Parties.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

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

BY:   
ELLEN BOWDEN MCENTYRE  
Assistant United States Attorney  
Office of the  
United States Attorney  
Middle District of Tennessee

DATED: 7/12/04

BY: Robert McAuliffe  
ROBERT J. MCAULIFFE  
Trial Attorney  
Civil Division  
U.S. Department of Justice

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

BY: \_\_\_\_\_  
LARRY J. GOLDBERG  
Assistant Inspector General  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and  
Human Services

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

BY: \_\_\_\_\_  
LAUREL C. GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of Defense

THE UNITED STATES OF AMERICA

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

BY: \_\_\_\_\_  
ELLEN BOWDEN MCENTYRE  
Assistant United States Attorney  
Office of the  
United States Attorney  
Middle District of Tennessee

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

BY: \_\_\_\_\_  
ROBERT J. MCAULIFFE  
Trial Attorney  
Civil Division  
U.S. Department of Justice

DATED: 9 July 2004

BY: Larry Goldberg  
LARRY J. GOLDBERG  
Assistant Inspector General for Legal  
Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and  
Human Services

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

BY: \_\_\_\_\_  
LAUREL C. GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of Defense

THE UNITED STATES OF AMERICA

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

BY: \_\_\_\_\_  
ELLEN BOWDEN MCENTYRE  
Assistant United States Attorney  
Office of the  
United States Attorney  
Middle District of Tennessee


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

BY: \_\_\_\_\_  
ROBERT J. MCAULIFFE  
Trial Attorney  
Civil Division  
U.S. Department of Justice

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

BY: \_\_\_\_\_  
LARRY J. GOLDBERG  
Assistant Inspector General  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and  
Human Services

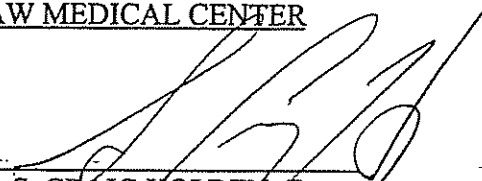
DATED: 28 MAY 2004

BY:   
LAUREL C. GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of Defense



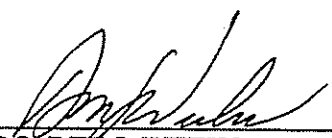
KERSHAW MEDICAL CENTER

DATED: 6/7/04

BY:   
S. CRAIG HOLDEN, Esq.  
Ober, Kaler, Grimes, & Shriver  
120 East Baltimore Street  
Baltimore, Maryland 21202-1643

Counsel for Kershaw County Medical Center

DATED: 6/4/04

BY:   
DONNIE J. WEEKS  
President and Chief Executive Officer  
Kershaw County Medical Center

RELATOR BARRY STEELEY

DATED: 05/27/04

  
BARRY STEELEY

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

BY: \_\_\_\_\_  
W. CHARLES BAILEY, JR.  
Simms Showers LLP.  
Twenty South Charles Street  
Baltimore, Maryland 21201

Counsel for Relator  
Barry Steeley

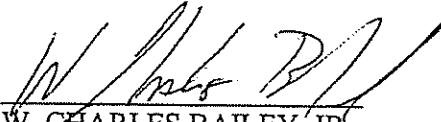
RELATOR BARRY STEELEY

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

\_\_\_\_\_  
BARRY STEELEY

DATED: 6-27-04

BY:

  
\_\_\_\_\_  
W. CHARLES BAILEY, JR.

Simms Showers LLP.  
Twenty South Charles Street  
Baltimore, Maryland 21201

Counsel for Relator  
Barry Steeley