

## SETTLEMENT AGREEMENT

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 Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the "United States"), and Senior Care Group ("SCG") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

### RECITALS

A. SCG operates two skilled nursing facilities within the Western District of North Carolina: Senior Care Group of Yancey, LLC, d/b/a "Brookside Rehabilitation Center and Care" and "Brookside Nursing Center" (together "Brookside") and Senior Care Group of McDowell, LLC, d/b/a "Sunrise Rehabilitation and Care" ("Sunrise").

B. The United States contends that SCG, through its facilities Brookside and Sunrise, 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. §§ 1395-1395hhh.

C. The United States contends that it has certain civil claims against SCG arising from possible violations of 31 U.S.C. §§ 3729, *et seq.*, submitted from April 3, 2003 through December 31, 2006 (by Sunrise) and from December 1, 2003 through December 31, 2006 (by Brookside). Specifically, the United States contends that Brookside and Sunrise knowingly and regularly inflated billings for rehabilitation services, a fraudulent practice known as upcoding, and billed for rehabilitation services that were not covered by Medicare. That conduct is referred to below as the "Covered Conduct."

D. This Settlement Agreement is neither an admission of liability by SCG, Brookside or Sunrise, nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. SCG, on behalf of Brookside and Sunrise, shall pay to the United States Nine Hundred Fifty-three Thousand Three Hundred Seventy-five Dollars (\$953,375) (Settlement Amount) as follows: SCG shall pay \$53,713.33 to the United States in equal quarterly installments ("Quarterly Installments") over sixty (60) months commencing 30 days after the Effective Date of this Agreement, as set forth in Exhibit A attached hereto and incorporated herein by reference. Each Quarterly Installment is inclusive of interest at a rate of 5.00 percent (5%) per annum. It is specifically agreed that if a payment date falls on a weekend or a federal holiday, the payment shall be due on the next regular business day. Failure to make any payment in full on the date specified in Exhibit A shall constitute a Default, as defined below, under this Agreement. All payments hereunder shall be made to the Office of the United States Attorney for the Western District of North Carolina through pay.gov financial management service.

2. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, in consideration of the obligations of SCG set forth in this Agreement, conditioned upon SCG's full payment of the Settlement Amount, and subject to Paragraph 14, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release SCG 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, and fraud, for the Covered Conduct.

3. In consideration of the obligations of SCG set forth in this Agreement and the Corporate Integrity Agreement (CIA) entered into between OIG-HHS and SCG, conditioned upon SCG's full payment of the Settlement Amount and subject to Paragraph 14, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Brookside and Sunrise under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 6 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Brookside and Sunrise from Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 6, below.

4. Default. In the event that SCG fails to pay any amount as provided in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, SCG shall be in Default of its payment obligations ("Default"). The United States will provide written notice

of the Default, and SCG shall have an opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to SCG, or to such representative as SCG shall designate in advance in writing. If SCG fails to cure the Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). SCG shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to SCG by any department, agency, or agent of the United States at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. SCG agrees not to contest any offset imposed and not to contest any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court. SCG shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

5. Exclusion. In the event of Default as defined in Paragraph 4, above, OIG-HHS may exclude SCG from participating in all Federal health care programs until SCG pays the Settlement Amount and reasonable costs as set forth in Paragraph 4, above. Such exclusion shall have national effect and shall also apply to all other federal procurement and nonprocurement programs. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by SCG in any capacity while SCG is excluded. This payment prohibition applies to SCG and all other

individuals and entities (including, for example, anyone who employs or contracts with SCG, and any hospital or other provider where SCG provides services). The exclusion applies regardless of who submits the claim or other request for payment. SCG shall not submit or cause to be submitted to any Federal health care program any claim or request for payment for items or services, including administrative and management services, furnished, ordered, or prescribed by SCG during the exclusion. Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. SCG further agrees to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion. SCG waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court.

Reinstatement to program participation is not automatic. If at the end of the period of exclusion SCG wishes to apply for reinstatement, SCG must submit a written request for reinstatement to the OIG in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. SCG will not be reinstated unless and until the OIG approves such request for reinstatement.

6. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any 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 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 obligations 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 for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- I. Any liability of individuals (including current or former directors, officers, employees, agents, or shareholders of SCG) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual); are indicted, or charged, or who enter into a plea agreement, related to the Covered Conduct.

7. SCG waives and shall not assert any defenses SCG 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.

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

9. 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 carrier or intermediary or any state payer, related to the Covered Conduct; and SCG 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.

10. a. Unallowable Costs Defined: 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. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of SCG, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (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) SCG'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 payments SCG makes to the United States pursuant to this Agreement; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to:
  - (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and
  - (ii) prepare and submit reports to the OIG-HHS, are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in this Paragraph 10.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to SCG.

b. Future Treatment of Unallowable Costs: If applicable,

Unallowable Costs shall be separately determined and accounted for by SCG, and SCG 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 SCG or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, SCG 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 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 SCG 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. SCG agrees that the United States, at a minimum, shall be entitled to recoup from SCG 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 SCG or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on SCG 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 SCG's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. SCG has provided sworn financial disclosure statements (Financial Statements) to the United States and the United States has relied on the accuracy and completeness of this Financial Statements in reaching this Agreement. SCG warrants that the Financial Statements are complete, accurate, and current. If the United States learns of asset(s) in which SCG had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by SCG on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$50,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement

stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of SCG previously undisclosed. SCG agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

12. In the event that the United States, pursuant to Paragraph 11 (concerning disclosure of assets), above, opts to rescind this Agreement, SCG agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to SCG that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

13. SCG 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 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 new value given to SCG, 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 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 to which SCG 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 under this Agreement, SCG 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 SCG's debts, or seeking to adjudicate SCG as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for SCG or for all or any substantial part of SCG's assets, SCG agrees as follows:

a. SCG's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and SCG shall not argue or otherwise take the position in any such case, proceeding, or action that: (I) SCG's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) SCG 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 SCG.

b. If SCG'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 SCG for the claims that would otherwise be covered by the releases provided in Paragraphs 4 and 5, above, SCG agrees that (I) any such claims, actions, or proceedings brought by the United States 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 SCG shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay;

(ii) SCG 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 within 365 calendar days of written notification to SCG that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 1, 2009; and (iii) the United States has a valid claim against SCG in the amount of \$1,243,632 plus penalties in the amount of \$10,000 per false claim, 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. SCG acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

15. 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 16 (waiver for beneficiaries Paragraph), below.

16. SCG agrees that it 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.

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

19. This Agreement is governed by the laws of the United States. The exclusive

jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Western District of North Carolina, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

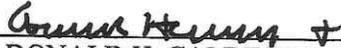
23. This Agreement is binding on SCG's successors, transferees, heirs, and assigns.

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

25. 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.

THE UNITED STATES OF AMERICA

DATED: 10/14/10

BY:   
DONALD H. CALDWELL, JR.  
Assistant United States Attorney  
Western District of North Carolina

DATED: 1/28/11

BY:   
GREGORY E. DEMSKE  
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

**SENIOR CARE GROUP**

DATED: 10/12/10 BY: Katherine Chudow  
KATHERINE CHUDOW  
Chief Financial Officer

DATED: 10/13/10 BY: Lee M. Whitman  
LEE WHITMAN  
WYRICK ROBBINS YATES & PONTON, LLP  
4101 Lake Boone Trail, Suite 300  
Raleigh, NC 27607  
Legal Counsel for Senior Care Group

AMORTIZATION SCHEDULE

\$953,375.00 to be paid quarterly over a period of 60 months at 5% interest.  
 The first payment is due 30 days after the signing of the settlement agreement.

Payment Number	Payment Date	Balance Due	Payment Amount	Interest	Principal	
Beg. Bal	10/31/2010	\$953,375.00	0	0	0	
1	02/01/11	\$903,503.92	\$53,713.33	\$3,842.25	\$49,871.08	
2	05/01/11	\$861,053.45	\$53,713.33	\$11,262.86	\$42,450.47	
3	08/01/11	\$818,073.80	\$53,713.33	\$10,733.68	\$42,979.65	
4	11/01/11	\$774,558.37	\$53,713.33	\$10,197.91	\$43,515.42	
5	02/01/12	\$730,500.50	\$53,713.33	\$9,655.45	\$44,057.88	
6	05/01/12	\$685,893.40	\$53,713.33	\$9,106.24	\$44,607.09	
7	08/01/12	\$640,730.25	\$53,713.33	\$8,550.18	\$45,163.15	
8	11/01/12	\$595,069.82	\$53,713.33	\$8,052.89	\$45,660.44	
9	02/1/13	\$548,835.51	\$53,713.33	\$7,479.02	\$46,234.31	
10	05/01/13	\$502,020.11	\$53,713.33	\$6,897.93	\$46,815.40	
11	08/01/13	\$454,616.32	\$53,713.33	\$6,309.54	\$47,403.79	
12	11/01/13	\$406,570.13	\$53,713.33	\$5,667.14	\$48,046.20	
13	02/01/14	\$357,925.00	\$53,713.33	\$5,068.20	\$48,645.13	
14	05/01/14	\$308,673.47	\$53,713.33	\$4,461.80	\$49,251.53	
15	08/01/14	\$258,807.99	\$53,713.33	\$3,847.85	\$49,865.48	
16	11/01/14	\$208,320.90	\$53,713.33	\$3,226.24	\$50,487.09	
17	2/01/15	\$157,204.44	\$53,713.33	\$2,596.88	\$51,116.45	
18	05/01/15	\$105,450.79	\$53,713.33	\$1,959.67	\$51,753.66	
19	08/01/15	\$53,051.98	\$53,713.33	\$1,314.52	\$52,398.81	
20	11/01/15	0	\$53,713.33	\$661.33	\$53,051.98	