

## SETTLEMENT AGREEMENT

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#### I. PARTIES

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 the County of Orange and the County of Orange Health Care Agency, Behavioral Health Services Division (Collectively referred to as "Orange County"). All of the foregoing are referred to collectively as "the Parties."

#### II. PREAMBLE

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

A. The County of Orange is a governmental entity that operates the County of Orange Health Care Agency, Behavioral Health Services Division (the "OCHCA"), and several outpatient clinics under the direction of the OCHCA.

B. The United States contends that the OCHCA 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.

C. The United States contends that it has certain civil claims against the OCHCA, as specified in Paragraph III.2, for causing Medicare to make overpayments to it during the period from January 1990 to December 31, 1999 in the following ways:

- (1) CPT Code 90801

The United States contends that the OCHCA frequently used CPT Code 90801 inappropriately. This code pertains to psychiatric diagnostic or evaluative interviews, which are reimbursable by Medicare only if performed by physicians, or by clinical psychologists and licensed clinical social workers who are under the direct personal supervision of a physician. Medicare covers a diagnostic interview once at the time of the initial evaluation, and covers subsequent diagnostic interviews only if the patient experiences a new episode of illness, or six months has transpired since previous treatment. Nonetheless, the OCHCA used 90801 to bill for a number of non-covered services performed by OCHCA personnel not licensed to render such services.

(2) CPT Code 90862

The United States further contends that the OCHCA frequently used CPT Code 90862 inappropriately. This code pertains to pharmacological management, including prescription, use, and review of medication. Nonetheless, the OCHCA used 90862 to bill Medicare for dispensing self-administered methadone to drug-addicted patients.

In addition, the United States also contends that the OCHCA frequently charged brief office visits to monitor or change a drug prescription under CPT Code 90862 (pharmacological management), when it should have billed such services under HCPCS M0064 (brief office visit to monitor or change drug prescriptions).

The conduct described in this Paragraph II.C shall hereinafter be referred to as the “Covered Conduct.”

D. The United States acknowledges that Orange County has cooperated fully with the United States in connection with this investigation. The United States further

acknowledges that Orange County voluntarily established a compliance program and continues with ongoing compliance initiatives through the present.

E. This Agreement is neither an admission of liability by Orange County nor a concession by the United States that its claims are not well founded.

F. The United States contends also that it has certain administrative claims against the OCHCA for engaging in the Covered Conduct under the provisions for permissive exclusion from Medicare, Medicaid and other Federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

### III. TERMS AND CONDITIONS

1. In consideration of the obligations of the United States set forth in this Agreement, Orange County agrees to pay to the United States \$7 million (the "Settlement Amount"). Orange County agrees to pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the Department of Justice. Orange County agrees to make this electronic funds transfer no later than thirty (30) days following the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph III.4, below, in consideration of the obligations of Orange County set forth in this Agreement, and conditioned upon Orange County's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Orange County 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; and common law theories of payment by mistake, unjust enrichment, fraud, breach of contract, restitution, recoupment, disgorgement, or any other statute creating causes of action for civil damages or civil penalties for submitting or causing to be submitted claims to the government based on the Covered Conduct.

3. In consideration of the obligations of Orange County set forth in this Agreement and the Integrity Agreement (IA) entered into between OIG-HHS and OCHCA this same date, and conditioned upon Orange County's full payment of the Settlement Amount, 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 OCHCA 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 III.4, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude OCHCA 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 III.4, below.

4. 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 the United States) are the following:

- a. Any civil, criminal, or administrative liability arising under Title

26, U.S. Code (Internal Revenue Code);

- b. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- c. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- d. Any liability based upon such obligations as are created by this Agreement;
- e. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- f. Any liability for failure to deliver goods or services due;
- g. Any claims of any State arising under the Medicaid Program relating to the state-funded Medicaid portion, or any other provision of law, based on the Covered Conduct; and
- h. Any criminal liability related to the Covered Conduct.

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

6. 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 the OCHCA 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. 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.

7. 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 8, below.

8. Orange County 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.

9. Orange County 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 Orange County, 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) Orange County'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 Orange County makes to the United States pursuant to this Agreement, including any costs and attorneys fees; and

(6) the negotiation of, and obligations undertaken pursuant to the IA to prepare and submit reports to the OIG-HHS. However, nothing in this Paragraph 9a.(6) that may apply to the obligations undertaken pursuant to the IA affects the status of costs that are not allowable based on any other authority applicable to Orange County. (All costs described or set forth in this Paragraph 9a. are hereafter "unallowable costs.")

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Orange County 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 Orange County 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. Orange County agrees that the United States, at a minimum, shall be entitled to recoup from Orange County any overpayment plus interest and penalties authorized by applicable law 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 Orange County or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Orange County or any of its subsidiaries or affiliates' 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. Orange County 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 its 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 Orange County, 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 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 Orange County was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

11. The Parties agree that the Settlement Amount is a non-dischargeable debt in any bankruptcy proceeding, and Orange County agrees that it will not contend to the contrary in any bankruptcy proceeding.

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

13. Orange County represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever, and that it has been advised with respect hereto by counsel prior to entering into this Settlement.

14. 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 is the United States District Court for the Central District of California, except that disputes arising under a IA shall be resolved exclusively under the dispute resolution provisions in the IA.

15. This Agreement and the IA constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

16. The individuals signing this Agreement on behalf of Orange County represent and warrant that they are authorized by Orange County to execute 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.

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

18. This Agreement is binding on Orange County's successors, transferees, heirs, and assigns.

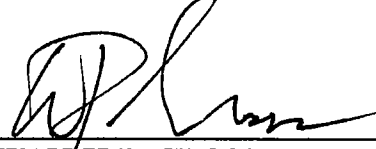
19. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

20. 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.

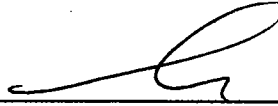
[SIGNATURE BLOCKS ON FOLLOWING PAGES]

**THE UNITED STATES OF AMERICA**

DATED: 11/2/07

BY:   
WAYNE R. GROSS  
Assistant United States Attorney  
Central District of California

DATED: 12/12/07

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

**FOR DEFENDANTS COUNTY OF ORANGE AND COUNTY OF ORANGE HEALTH  
CARE AGENCY, BEHAVIORAL HEALTH SERVICES DIVISION**

DATED: 11/9/07

BY:   
CHAIRMAN OF THE  
BOARD OF SUPERVISORS

Approved as to Legal Form:  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

DATED: 11/8/07

BY:   
DEPUTY CHRISTOPHER J. MILLER