

AGREEMENT ON STAFFING AT CALIFORNIA SKILLED NURSING HOMES

The People of the State of California, by and through their attorneys, and Skilled Healthcare Group, Inc. (hereafter “SKH Group”); Skilled Healthcare, LLC, (hereafter “SKH LLC” and collectively with SKH Group as “SKH”); Alexandria Care Center, LLC; Alta Care Center, LLC; Anaheim Terrace Care Center, LLC; Bay Crest Care Center, LLC; Brier Oak On Sunset, LLC; Carehouse Healthcare Center, LLC; Devonshire Care Center, LLC; Elmcrest Care Center, LLC; Fountain Care Center, LLC; Hancock Park Rehabilitation Center, LLC; Montebello Care Center, LLC; Royalwood Care Center, LLC; Sharon Care Center, LLC; St. Elizabeth Healthcare and Rehabilitation Center, LLC; Sycamore Park Care Center, LLC; The Earlwood, LLC; Valley Healthcare Center, LLC; Villa Maria Healthcare Center, LLC; Willow Creek Healthcare Center, LLC; and Woodland Care Center, LLC, by and through their attorneys, agree as follows:

I. DEFINITIONS

1. “Affiliate(s)” means:
 - a. Any person or entity directly or indirectly owning, controlling, or holding with power to vote twenty percent (20%) or more of the outstanding voting securities of such other person or entity;
 - b. Any entity that has twenty percent (20%) or more of its outstanding voting securities directly or indirectly owned, controlled, or held with power to vote by another person or entity; or
 - c. Any person or entity directly or indirectly controlling, controlled by, or under common control with, such other person or entity.
2. “Auditor” means and refers to the independent auditor, Larry Blitz of HFS Consultants, who has entered into an appropriate and binding business associate agreement under HIPAA with each Facility (as defined below), who shall monitor Facilities’ compliance with the terms of this Agreement. If Mr. Blitz and/or HFS Consultants are unable or unwilling to serve in

such capacity the parties shall select a successor Auditor as follows: the People shall present SKH with a list of three individuals having the necessary and appropriate qualifications to complete the responsibilities outlined in this Agreement and the SKH shall select that Auditor from that list. SKH shall pay all of the Auditor's fees and costs.

3. "Bi-Weekly Labor Reports," also known as "Bi-Weekly Labor Hours Report," means the documents prepared and kept by Facilities in the ordinary course of their business that summarize the total hours of labor, by department, delivered at the Facility during a two week pay period. "E-Time data" means the electronic version of Facilities' daily staffing which contains the total hours of labor by employee, by Job Code, delivered at the Facility on a daily basis.

4. "People's Counsel" means counsel of record for the People, specifically, Alan B. Robison and Jennifer B. Euler of the California Attorney General's Office.

5. "Parties" means SKH, all its California Facilities, and the People.

6. "Compliance Report" means the report described in paragraph 21.

7. "Control" (and its variations, e.g., "controlling" and "controlled") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting share, by contract, or otherwise.

8. "Enforcing Party" means the People of the State of California, by and through the California Attorney General's Office.

9. "Effective Date" means the date of this Agreement which shall, by stipulation of the parties, be February 19, 2013.

10. "Facility" or "Facilities" means the following parties for so long as they are an Affiliate of SKH Group and licensed to operate skilled nursing facilities in California: Alexandria Care Center, LLC; Alta Care Center, LLC; Anaheim Terrace Care Center, LLC; Bay Crest Care Center, LLC; Brier Oak On Sunset, LLC; Carehouse Healthcare Center, LLC;

Devonshire Care Center, LLC; Elmcrest Care Center, LLC; Fountain Care Center, LLC; Hancock Park Rehabilitation Center, LLC; Montebello Care Center, LLC; Royalwood Care Center, LLC; Sharon Care Center, LLC; St. Elizabeth Healthcare and Rehabilitation Center, LLC; Sycamore Park Care Center, LLC; The Earlwood, LLC; Valley Healthcare Center, LLC; Villa Maria Healthcare Center, LLC; Willow Creek Healthcare Center, LLC; and Woodland Care Center, LLC.

11. “Full Compliance” means compliance with the provisions of Section II of this Agreement, which will be deemed met unless the Enforcing Party proves a violation of this Agreement as set forth in Section IV of this Agreement.

12. “Nursing Hour Compliance Monitor” means the individual designated by SKH to coordinate production of documents to Auditor as set forth in paragraphs 21 & 22.

13. “Nursing Hours Per Patient Day” means the total hours of nursing duties provided by the Facility’s Nursing Staff divided by the Facility’s daily Resident Census.

14. “Nursing Staff” means (1) registered nurses, (2) licensed vocational nurses, (3) certified nursing assistants, (4) restorative nursing assistants, (5) MDS Coordinators, (6) Nurse Assistants as defined by Health and Safety Code sections 1337 and 1337.5, and (7) the Assistant Director of Nursing. Nursing Staff does not include the Director of Nursing, the Director of Staff Development, the Director of Activities, the Head of Housekeeping, unless an employee is properly licensed or certified and is providing direct nursing services in addition to their non-nursing duties and evidence in writing the direct nursing services performed and the time engaged in performing direct nursing services. Nursing staff does not include private care givers hired by or on behalf of any Resident, or Hospice employees.

15. “Posting Requirements” means posting of that information that Facilities are required to post pursuant to 42 C.F.R. section 483.30(e) and set forth in paragraph 20.

16. “Resident Census” means the actual number of residents in a Facility as measured at 11:59 p.m. of that calendar day. Resident census does not include bedholds.

17. "Resident" and "Patient" refer to those individuals who reside (or resided) in Facilities.

18. "Subsidiary" means an Affiliate controlled by such person or entity directly or indirectly through one or more intermediaries.

19. "Substantial Discrepancy" means a negative difference of 3% or more between the actual Nursing Hours Per Patient Day as determined by the Auditor and the claimed Nursing Hours Per Patient Day as reported in the Compliance Reports for the audit period that results in the actual Nursing Hours Per Patient Day being less than 3.2 when it was reported more than 3.2.

II. NURSING HOURS

20. At all times, pursuant to this agreement, SKH shall be responsible for ensuring that the Facilities operating skilled nursing facilities comply with Health and Safety Code section 1276.5 by providing a minimum of 3.2 Nursing Hours Per Patient Day. Additionally, at all times the Facilities operating skilled nursing facilities shall comply with Health and Safety Code section 1276.5 by providing a minimum of 3.2 Nursing Hours Per Patient Day. SKH and the Facilities shall not be deemed in violation of 3.2 if that staffing level is not met by reason of fire, flood, or earthquake, completely beyond the control of the Facility which cannot be overcome by reasonable diligence. In such event, Facility will provide a description and evidence of the event or circumstances and the steps Facility has taken to mitigate the effect in its Compliance Report for the relevant period.

21. Facilities shall adhere to the Posting Requirements.

22. On or before the last day of each month following the month reported, which reported month shall begin on February 1, 2013 and continuing each month thereafter for as long as this Agreement is in effect, Facilities shall provide People's Counsel and the Auditor with a monthly Compliance Report for each Facility that contains all of the following information:

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- (a) the Resident Census for each day during the reporting period; and
- (b) the Facilities' Nursing Hours Per Patient Day for each day during the reporting period.

Neither the Auditor nor People's Counsel shall use the information contained on the Compliance Reports for any other purpose other than carry out their respective responsibilities under this Agreement or to prove a violation of the Settlement Agreement. The Auditor and People's Counsel shall keep the Compliance Reports and the information contained thereon confidential. Furthermore, Auditor and People's Counsel agree to use all necessary steps to return, destroy or delete the Compliance Reports within thirty (30) days of Defendant(s) being released from this Agreement. The Compliance Report shall be signed by the Facility's Director of Nursing or the Facility's Administrator attesting that the information contained therein is true and accurate to the best of his/her knowledge after having conducted reasonable and diligent inquiries into the matters.

23. Together with the Compliance Report, for each Facility for all pay periods during the month reported, Facilities shall also provide the Auditor (but not People's Counsel) with documentation for all nursing duties and time claimed in the Nursing Hours Per Patient Day for any personnel with primarily administrative and/or non-nursing titles or duties. Such documentation shall include, but not limited to: (1) the E-Time data and Bi-Weekly Labor Reports, or their functional equivalent containing the same data; (2) documentary evidence such as Time Card Correction Documents (aka "Missed Punch Documents") and any other evidence or documentation signed by the employee/worker or his/her supervisor. The E-Time data, Bi-Weekly Labor Reports and any other documentation or data produced pursuant to this section shall not be used by the Auditor for any purposes other than overseeing compliance with this Agreement and may only be used in this litigation to enforce the Agreement. The Auditor agrees to use all necessary steps to return, destroy or delete all E-Time data, Bi-Weekly Labor Reports, documents, data, reports, summaries or correspondence received by Auditor and generated by

the Auditor related in any way to the provisions of this section and to do so within thirty (30) days of SKH being released from this Agreement.

24. Nothing stated in this Agreement shall relieve Facilities, or SKH, from complying with any other applicable federal or state statute, regulation or prior court orders.

III. AUDITS

25. Once each quarter, beginning on April 30, 2013, and continuing each quarter thereafter for as long as this Agreement is in effect, the Auditor shall select up to four of the Facilities for an in-depth audit of the backup data supporting Facilities' Compliance Reports. An audited Facility shall remain in the pool of Facilities and subject to additional audits, unless this Agreement has terminated with respect to the Facility pursuant to the terms contained in this Agreement.

26. On or before the fifteenth day of the second month following the end of each calendar quarter with a full month reported, the Auditor shall send a letter to the General Counsel for Facilities with a copy to Scott Kiepen, Hooper Lundy & Bookman informing Facilities of the Facilities to be audited that reported quarter, and a copy of said letter to counsel for the Enforcing Party.

27. Within thirty (30) days following this notification, Facilities shall provide the Auditor with all backup data for the Compliance Reports for the prior reported calendar quarter at each of the four identified Facilities. Facilities shall also permit the Auditor to examine the original documents purportedly supporting the Compliance Reports and any deficiencies or citations received by the Facilities that were issued to the Facilities by the Department of Public Health for staffing level violations occurring in the prior reported calendar quarter, and to interview staff at each of the audited Facilities to determine whether the Facilities' reporting is accurate and whether the Facilities' staffing levels are sufficient.

28. Within thirty (30) days following the Auditor's receipt of the Facilities' backup data for the Compliance Reports, the Auditor shall prepare written reports for each of the audited

Facilities, and deliver a copy of these reports to counsel for the Parties to this Agreement. The Auditor's report shall contain all the following:

- (a) a specific description of any Substantial Discrepancies;
- (b) the Auditor's findings as to the actual Nursing Hours Per Patient Day for each day in which the Auditor determined that there was a Substantial Discrepancy;
- (c) the Auditor's findings as to whether the Facility is providing sufficient qualified staffing to provide at least 3.2 Nursing Hours Per Patient Day for all days in the subject reporting period;
- (d) a summary of deficiency notices, citations, or complaints that concern or relate to staffing issues;
- (e) a summary of the Auditor's interviews with staff; and
- (f) anything the Auditor believes is relevant to the Facility's compliance with this Agreement. All Parties shall destroy their respective copies of the Auditor's report within 60 days of the termination of this Agreement.

29. If the Auditor finds any Substantial Discrepancy, then that Facility shall be audited again during the next quarter, in addition to the Facilities selected as part of the normal auditing process.

30. If Facilities or SKH wish to respond to the Auditor's report, they shall have fourteen (14) days from the date the Auditor's Report is received to respond to the report and or provide supplemental back-up data. The Auditor may update its report in response to any SKH or Facilities' response or supplemental back-up data.

31. The Auditor shall be permitted to make a surprise inspection at any Facility to determine compliance with this Agreement. Upon arrival to Facility, the Auditor shall announce his/her presence to the Administrator, Director of Nursing of Facility or person in charge. Facilities shall permit the Auditor, as part of any inspection, to examine the original documents purportedly supporting the Compliance Reports. In addition, the Auditor shall be permitted to

inspect records from ADP Payroll Processing and/or Southwest Payroll, if necessary, as part of the Auditors' inspection, even if maintained at a location different from the inspected Facility, if determined by the Auditor to be necessary. In all circumstances, the Auditor shall in no manner interfere with the delivery of care to residents, whether directly by his or her own actions or by demands upon staff that causes such an interference. For this reason, the Auditor shall coordinate securing the requisite documents and review of any necessary documents with Facility Nursing Hour Compliance Monitor and any such records will be produced only during normal business hours in the ordinary course. The Auditor shall prepare a report outlining his/her findings including any alleged violations of this Agreement.

IV. ENFORCEMENT OF THE AGREEMENT

32. At their sole discretion, Enforcing Party may (but shall not be required to) compel compliance with this Agreement and/or make a demand of sanctions against one or more Facilities and SKH for violation of this Agreement only if the Facility committed one or more of the following violations or, in the event that Enforcing Party makes a demand against more than one of the Facilities, the Facilities each committed one or more of the following violations:

- (a) Facility fails to provide a Compliance Report;
- (b) Facility fails to comply with the Posting Requirements;
- (c) the Auditor identifies and reports a Substantial Discrepancy; or
- (d) Facility fails to provide 3.2 Nursing Hours Per Patient Day for 5 percent or more of the audited days (whether or not consecutive) in any month.

33. Prior to making a demand or filing a legal action to enforce this Staffing Agreement, Enforcing Party shall notify the Facility and SKH of the alleged violation of the Agreement and any suggested cure for the alleged violation. The Facility shall have fourteen (14) days from the date that notice is received by Facility to respond to the issues raised by Enforcing Party, including a proposed plan of correction, an explanation of the circumstances surrounding the alleged violation, and any other information that the Facility believes is relevant

to the issues raised. If the matter is not resolved with the 14-day meet and confer period, the Enforcing Party, in its sole discretion, shall be entitled to bring a motion to enforce this Staffing Agreement. The parties agree that venue shall be appropriate in Humboldt County.

34. In determining any remedy against a Facility and/or SKH for violation of the Staffing Agreement, the court shall consider whether the facility-wide average is 3.40 or greater during the time periods in question.

35. Nothing stated herein shall require Enforcing Party to file any motion to enforce the Agreement. Enforcing Party shall not be deemed to have waived any right if it elects to defer or postpone the filing of any such motion and nothing stated herein shall preclude Enforcing Party from using the Compliance Reports or Auditor's reports (or the information contained therein) for any purpose relevant to the enforcement of this Staffing Agreement or the Settlement Agreement. A violation of this Staffing Agreement shall be proved by a preponderance of the evidence, which may include hearsay evidence.

V. DURATION

36. This Agreement shall remain in full force and effect unless it is modified by a court order. SKH and the Facilities will not, unless agreed to by the People, seek modification of this agreement for at least two (2) years after the effective date of this agreement.

37. This Agreement shall terminate twenty-four (24) months after Effective Date unless the Enforcing Party proves that SKH and the Facilities were not in Full Compliance as set forth in paragraph 10 of this Agreement. SKH and the Facilities will not seek early termination of this Staffing Agreement.

38. If Nursing Hours Per Patient Day standard set forth by Health and Safety Code section 1276.5 is changed, clarified and/or modified by statute or regulation, either substantively or in the manner of state or federal enforcement, the Parties shall modify this Agreement consistent with such new statutes and/or regulations.

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VI. RELIANCE ON STAFFING AGREEMENT

39. Only the parties to this Agreement may rely upon or enforce this Agreement.

40. The parties to this Agreement, and SKH's affiliates and subsidiaries, stipulate that nothing in this Agreement, or resolution of the criminal case (Humboldt County Superior Court case No. CR1205039), in any manner or under any circumstances, constitutes an action described in Section II.F.2 of the "*Class Settlement Agreement and Release with Plaintiffs Vinnie Lavender (By and Through Her Conservator), Wanda Baker, Walter Simon, and Jacquelyn Vilchinsky,*" dated as of September 7, 2010 (the "Plaintiff's Settlement Agreement") in Humboldt County Superior Court case DR060264, nor impacts at all, in any manner or under any circumstances, any past, present, or future payments referenced in, or provided for in, the "*Settlement Agreement and Release with the People of the State of California, by and through Intervenor, the Humboldt County District Attorney's Office,*" dated as of September 7, 2010 (the "Intervenor's Settlement Agreement"), in Humboldt County Superior Court case DR060264, nor impacts at all, in any manner or under any circumstances, any past, present, or future payments referenced in, or provided for in, any other Settlement Agreement, or Plan of Distribution, or court orders in Humboldt County Superior Court case DR060264. The parties, and SKH's affiliates and subsidiaries, further stipulate that this Agreement and the resolution of the criminal case have no impact, in any manner or under any circumstances, on how any of the remaining settlement money, including any interest thereon, in the "*VINNIE LAVENDER by and through her Conservator, WANDA BAKER; WALTER SIMON; JACQUELYN VILCHINSKY, Plaintiffs, vs. SKILLED HEALTHCARE GROUP, INC., et al., Defendants,*" Humboldt County Superior Court case DR060264, is distributed. In other words, the parties, and SKH's affiliates and subsidiaries, expressly stipulate that the Plan of Distribution, and any payment of money, past, present, or future, and any other court orders in Humboldt County Superior Court case DR060264, will proceed as though this Agreement, and all its provisions and related actions by the People, and the resolution of the criminal case, have never occurred.

DATED: 2/13/13 By: 

HOOPER, LUNDY & BOOKMAN, P.C.

Scott J. Kiepen

Attorneys for:

Skilled Healthcare Group, Inc.; Skilled Healthcare, LLC; Alexandria Care Center, LLC; Alta Care Center, LLC; Anaheim Terrace Care Center, LLC; Bay Crest Care Center, LLC; Brier Oak On Sunset, LLC; Carehouse Healthcare Center, LLC; Devonshire Care Center, LLC; Elmcrest Care Center, LLC; Fountain Care Center, LLC; Hancock Park Rehabilitation Center, LLC; Montebello Care Center, LLC; Royalwood Care Center, LLC; Sharon Care Center, LLC; St. Elizabeth Healthcare and Rehabilitation Center, LLC; Sycamore Park Care Center, LLC; The Earlwood, LLC; Valley Healthcare Center, LLC; Villa Maria Healthcare Center, LLC; Willow Creek Healthcare Center, LLC; and Woodland Care Center, LLC.

Kamala D. Harris

Attorney General of the State of California

DATED: 2-15-13 By: 

Alan B. Robison

Supervising Deputy Attorney General

Bureau of Medi-Cal Fraud and Elder Abuse

Office of the Attorney General

California Department of Justice

DATED: 2-12-13 By: 

Roland Rapp

Executive Vice President and General Counsel

Skilled Healthcare Group, Inc.

Skilled Healthcare, LLC