INTEGRITY AGREEMENT
GRADY HEALTH SYSTEM

As part of the resolution of the civil matter involving Grady Health System and the United States Department of Justice, United States Attorney's Office for the Northern District of Georgia, this Integrity Agreement ("the Agreement") is entered into on July 10, 1998 between The Fulton-DeKalb Hospital Authority d/b/a Grady Health System (hereafter referred to as "Grady") and the Office of Inspector General of the United States Department of Health and Human Services ("HHS-OIG") (collectively referred to as the "parties").

I. Preamble

Grady agrees to undertake the compliance and corporate integrity obligations outlined below for a period of five (5) years. At the end of four (4) years from the date of execution of this Agreement, however, Grady shall have the right to petition HHS-OIG for early termination of this Agreement. The petition for early termination (the "Petition") shall be submitted in writing to the address designated in Part II.F.2. of this Agreement and shall state the grounds therefor. HHS-OIG shall review the Petition and shall submit in writing its decision concerning early termination. Written notice of the decision shall be provided in accordance with Part IV. In determining whether the Petition should be granted, HHS-OIG shall consider: (1) Grady's compliance with the provisions of the Agreement; (2) the state of Grady's compliance program and its effectiveness; (3) the costs to Grady imposed by the Agreement and the effect of those costs on Grady's ability to fulfill its mission to provide health care to indigent patients and to the community; and (4) the opinions of any fiscal intermediaries, carriers, or officers thereof or officers of the Georgia Department of Medical Assistance who have been involved in the processing of billings submitted by Grady under Medicare, Medicaid, or other federal health care programs.

In consideration of the integrity obligations undertaken pursuant to this Agreement, HHS-OIG agrees to release and refrain from instituting, directing or maintaining any administrative monetary claim or any action seeking exclusion from the Medicare, Medicaid or other federal health care programs against Grady, its current and former directors, officers, trustees and employees under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b) (permissive exclusion) to the extent that Grady is released under paragraph 5 of the Settlement Agreement and Release. Nothing in this paragraph precludes the HHS-OIG from taking action against Grady or any other entity or individual for conduct or practices for which administrative claims have been reserved in the Settlement Agreement and Release, paragraph 6.

Grady agrees to implement an Integrity Program (the "Program") to prevent fraud, abuse, and false billing to the Medicare, Medicaid and other federal health care programs (as defined in 42 U.S. 1320a-7b(f)) by Grady, its subsidiaries, employees, independent

contractors, active staff physicians, and other third parties whose services are ordered, provided or certified as medically necessary by Grady personnel. The Program shall be maintained to ensure that Grady and each of its directors, officers, employees and contractors maintain the business integrity required of a participant in federal health care programs, and that Grady's delivery of medical care is in compliance with all laws and regulations applicable to such programs and with the terms of the Agreement set out below.

II. Integrity Obligations

Grady agrees to pursue the following course of action to ensure full and accurate compliance for its entire system with Medicare, Medicaid and other federal health care program regulations and program requirements for its outpatient and inpatient hospital services provided by Grady personnel and any third parties whose services are contracted for by Grady. Grady shall provide annual or periodic written reports, pursuant to the requirements of paragraph II.F, to HHS-OIG Office of Counsel to the Inspector General ("OCIG") detailing the actions it has taken pursuant to this Agreement.

A. *Compliance Committee and Compliance Officer*

Within thirty (30) days of the execution of this Agreement, Grady's Board of Trustees shall appoint a Compliance and Ethics Committee which shall be responsible for the oversight and monitoring of the Program until the appointment of the Compliance and Ethics Officer. The members of the Compliance and Ethics Committee shall include, at a minimum, the Compliance and Ethics Officer, upon his or her appointment as provided below, with responsibility for compliance operations and reporting requirements, the Chief Operating Officer of Grady, the General Counsel of Grady, the Chief Financial Officer of Grady, a member of the Grady Internal Audit Department, and a member of the Grady Human Resources Department. The Chief Operating Officer of Grady shall act as Chairman of the Compliance and Ethics Committee and shall assume responsibility for oversight and monitoring of the Program until the appointment of the Compliance and Ethics Officer. Within one hundred and twenty (120) days of the execution of the Agreement, Grady's Chief Executive Officer shall appoint a Compliance and Ethics Officer who shall become a member of and chair the Compliance and Ethics Committee. Upon the appointment of the Compliance and Ethics Officer, the Compliance and Ethics Officer shall assume the position of Chairman of the Compliance and Ethics Committee as well as responsibility for oversight and monitoring of the Program. The Chief Operating Officer shall remain a member of the Compliance and Ethics Committee after the Compliance and Ethics Officer is appointed by the Chief Executive Officer. The Compliance and Ethics Officer shall not be a part of the General Counsel's office and generally shall report to the Chief Executive Officer. The Compliance and Ethics Officer, however, shall be able to report directly to the Legal Affairs Committee of the Board of Trustees of Grady when he or she deems it necessary or appropriate to do so. A list of all current Compliance and Ethics Committee members must be included with Grady's submission of its interim implementation report to OCIG. Grady also agrees to provide to OCIG an updated list to

reflect changes in position on the Compliance and Ethics Committee within a reasonable time of any such changes, but no later than thirty (30) days from any such change.

The Compliance and Ethics Officer shall be responsible for (1) the submission of all reports required under this Agreement to the Board of Directors of Grady as well as to the OCIG, and (2) the development, implementation and oversight of the Program in accordance with the following requirements:

B. *Written Policies and Procedures*

1) Within 90 days after execution of this Agreement, Grady shall develop the Program and implement written compliance policies and procedures that shall address the proper submission of billings to the Medicare, Medicaid and other federal health care programs. These policies and procedures shall incorporate and conform to current statutory and regulatory guidelines and shall be updated as appropriate to reflect changes in germane laws or regulations. These written policies and procedures shall be distributed to all employees involved with the delivery or administration of health care services, including those involved in preparing or submitting Medicare, Medicaid and other federal health care program bills at Grady, and shall advise employees of Grady's commitment to comply with all laws and regulations and to accurately bill consistent with Medicare, Medicaid and other federal health care program regulations and procedures. These written policies shall also include clear and consistently applied employee disciplinary policies regarding any breach of Grady's Program.

2) Grady shall also include in its written policies and procedures a provision that Grady shall not knowingly contract with or employ, with or without compensation, any individual, or entity currently listed by a federal agency as excluded, debarred, suspended or otherwise ineligible to participate in federal programs. In order to carry out this policy, Grady shall make reasonable inquiry into the status of any prospective employee, consultant, or contractor engaged in the delivery or billing of health care services. Grady shall also make reasonable inquiry into the status of any current employee, consultant, or contractor to participate in federal health care programs if Grady has reason to suspect that such employee may not be eligible to participate. Such reasonable inquiry shall include, at a minimum, pre-employment review of the HHS-OIG Cumulative Sanctions Report and the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs. This GSA listing may be accessed on the Internet at http://www.arnet.gov/epls. The HHS-OIG Cumulative Sanctions Report listing is currently found on the Internet at http://www.dhhs.gov/progorg/oig.

3) As required by its written policies and procedures, Grady shall review its current billing systems for all of its departments and where appropriate revise or create adequate billing systems that will properly and accurately bill for services the hospital or its contractors provide to individuals covered by the Medicare, Medicaid and/or other federal health care programs. In developing its policies and procedures, Grady shall pay

particular attention to improving and ensuring the accuracy of its billing system in its pharmacy. Specifically, among other issues, Grady's written policies and procedures and its billing system for its pharmacy shall address mechanisms to assure the correct billing for (i) amount or price for drugs, (ii) units for billing purposes; (iii) dispensing fee charges, and (iv) Medicare revenue codes. Grady also agrees to maintain accurate cost of drugs information to determine and verify proper Medicare, Medicaid and federal health care program billings. The written policies and procedures shall also highlight the difference between the Medicare program and Medical Assistance regarding the reimbursement for "take-home" drugs dispensed on an outpatient basis.

4) Grady's written policies and procedures should at a minimum require that, on a system-wide basis, (i) the CPT or HCPCS code used by the billing staff to bill Medicare, Medicaid and other federal health care programs accurately describes the service that was ordered and performed; (ii) duplicate billings for the same service are not submitted; (iii) the medical records are properly and timely maintained in a manner consistent with certification and licensing requirements; (iv) services for which bills are submitted to the Medicare, Medicaid or other federal health care programs are determined by appropriate personnel to be medically necessary and covered services under applicable guidelines; (v) all diagnosis codes submitted with a reimbursement billings are accurate and current; (vi) billings are not submitted for services not rendered; (vii) reasonable collection efforts are made to collect any amounts due by patients, their families or insurers, including co-payments or deductibles; and (viii) that the correct Health Insurance Code (HIC) is used when billings are submitted to a third party payor. The Compliance and Ethics Officer and Chief Executive Officer shall be responsible for ensuring that Grady makes all reasonable efforts to adhere to the written policies and procedures described above.

5) Grady's written policies and procedures will state, and Grady agrees, that it will submit all corrective action plans, as requested by the Medicare Fiscal Intermediary, the Georgia Department of Medical Assistance, or any other federal health care program, on a timely and adequate basis, unless prior written approval for a delay is obtained by the requesting entity. Grady also agrees that it will diligently identify, pursue and correct any problems which gave rise to a request for such corrective action plans, if any.

C. *Training and Education*

Within 120 days of the effective date of this Agreement, Grady, under the direction of the Compliance and Ethics Committee, shall develop and commence implementation of an effective training and educational program for all of its professional and clerical employees, active staff physicians, and independent contractors involved in providing outpatient pharmacy services and/or preparing or submitting such billings for reimbursement to the Medicaid and/or other federal health care programs. Likewise, within 180 days from the effective date of this Agreement, Grady shall also develop and commence implementation of an effective training and educational program for all of its professional and clerical employees, active staff physicians, and independent contractors

involved in providing health care services and/or preparing or submitting billings for reimbursement to the Medicare, Medicaid and other federal health care programs separate and apart from the outpatient pharmacy services. Such training is mandatory for all identified employees, must be conducted at regularly scheduled times but at least once a year, and must cover, at a minimum:

- Grady's policies and procedures under its Program;
- Any new laws and regulations directly related to federal reimbursement for health care services provided to individuals covered under Medicare, Medicaid and/or other federal health care programs;
- The existence and proper use of the voluntary disclosure program described in paragraph II.E;
- the submission of accurate bills for services rendered to Medicare, Medicaid and other federal care program patients;
- the legal requirement to use reasonable collection efforts with regard to copayment and deductible obligations from insured patients and full payment from the uninsured (or adequate documentation to reflect indigence, if applicable);
- the personal and ethical obligation of each individual, especially those involved in the billing process to ensure that such billings are accurate;
- the legal sanctions for improper billing practices; and examples of improper billing practices;
- the penalties for improper or fraudulent submission of bills to federal health care programs, the federal Anti-Kickback Statute, potential criminal, civil and administrative penalties for violations thereof, and Grady's policy to avoid violations of these laws; and
- the need to verify HIC numbers to prevent billing to Medicare for non-Medicare beneficiaries and to verify that bills for services do not have dates of service following a patient's date of death.

Such training shall also be included in the formal orientation of new employees who are or will be involved in furnishing inpatient and outpatient reimbursable services and/or preparing or submitting billings for reimbursement for such inpatient and outpatient services to Medicare, Medicaid and/or other federal health care programs. Grady shall provide such training to active staff physicians as well. As appropriate, training of active staff physicians may be conducted jointly with such other institutions at which the active staff physicians share staff privileges or are otherwise employed. Such training should reinforce the need for strict compliance with the law and hospital policies, and should inform employees that any failure to comply may result in disciplinary action. This training and education program shall be updated annually as appropriate. Grady's Chief Executive Officer and its Compliance and Ethics Officer shall certify in its annual report that such annual training has been provided and completed. Grady shall provide such certification(s) and shall set forth generally the format, content and materials provided in its training in its annual report to OCIG.

D. *Periodic and Annual Reviews, Audits and Monitoring*

1) Policy and Contract Review.

(a) Within 120 days of the execution of this Agreement, Grady shall review its current billing system(s) for all departments beginning with the Pharmacy Department. Upon the conclusion of such a review, Grady shall report its findings to OCIG, its Medicare Fiscal Intermediary, and the Georgia Department of Medical Assistance.

(b) In addition, within 150 days from the execution of this Agreement, Grady shall contract with a qualified and reputable independent professional organization, such as an accounting, health care consultant, or law firm, to thereafter review on an annual basis its billing and contract policies, procedures and practices of Grady and its subsidiaries, and practices attendant to the submission of billings to Medicare, Medicaid and other federal health care programs for inpatient and outpatient services. This annual review shall ensure that (i) all contracts with referring persons or entities comply with all applicable state and federal laws and regulations; (ii) Grady does not submit or cause to be submitted to the Medicare, Medicaid and/or other federal health care programs billings for patients who were referred to Grady under contracts or arrangements that were designed to induce such referrals in violation of the federal Anti-Kickback Statute, § 1128B(b) of the Social Security Act, 42 U.S.C. § 1320a-7b(b), and (iii) any and all payment or billing adjustments have been made in a timely fashion, per Health Care Financing Administration (HCFA) requirements.

2) Annual Audits

(a) As part of its annual review of federal health care program billings, Grady shall annually conduct through an independent third party a statistically valid sampling of its outpatient pharmacy services billed to the Medicaid or other federal health care programs.

(b) In addition, Grady shall conduct an annual audit (by internal qualified personnel if the workplan is reviewed and approved in writing by an appropriate independent professional organization in advance of implementation) of billings for reimbursement for inpatient and outpatient services designed to determine the accuracy and validity of outpatient claims submitted to Medicare, Medicaid and other federal health care programs for reimbursement. Specifically, these annual audits shall focus on: (i) the accuracy of reimbursement billings for pharmacy services to Medicaid and other federal health care programs; (ii) proper credit balance reporting to the Fiscal Intermediary; (iii) correct dates of service on all federal health care program billings; (iv) any billings for non-covered services which were inappropriately coded as covered services; (v) whether services were billed under the appropriate revenue codes; (vi) whether there was a problem involving the duplicate submission of billings to federal health care programs; (vii) whether billings were submitted for services not rendered; (viii) whether billings were

supported by adequate and appropriate medical documentation; (ix) the use of reasonable collection efforts regarding patients' payment obligations; and (x) whether services were billed using the correct HIC numbers.

3) Periodic or Ad Hoc Audits/Investigations and Reporting

In the event that Grady has reason to suspect or know that there is a material violation of Applicable Laws at any time during the term of this Agreement, Grady shall report the findings of a subsequent investigation to OCIG in the following manner. If at the conclusion of the internal investigation, which shall be no later than within sixty (60) days of the start of its inquiry/investigation, Grady determines that there are reasonable grounds to conclude that a material violation of Applicable Laws, this Agreement, or Grady's Program did occur, Grady shall immediately undertake appropriate corrective actions, including prompt restitution of any damages or overpayments to the appropriate payor to the extent that Grady is legally responsible for any such damages or overpayments. A material violation of Applicable Laws is one which has a significant, adverse financial impact on federal health care programs and one which affects Grady's (and/or its successors' or assigns') continued participation in federal health care programs. Applicable Laws are defined for purposes of this Agreement as those federal and state laws, regulations, guidelines and standards governing federal health care programs.

Grady will report promptly, but no later than thirty (30) days from discovery of a potential material violation (*i.e.*, from the initiation of the internal investigation), to OCIG: (i) its findings concerning the material violation (if any up to that date), (ii) Grady's actions as of that date to correct such material violation (if any), and (iii) any further steps Grady plans to take to address such material violation and prevent it from reoccurring in the future. Within sixty (60) days of identification of a potential material violation, Grady shall remedy any such violations or potential violations; if the violations cannot be reasonably corrected within sixty (60) days, Grady shall submit to OCIG within the aforementioned sixty (60) days a proposed written plan detailing appropriate corrective steps to be taken (the "written plan"). This written plan shall identify such time period as Grady reasonably believes is required to cure, which time period shall be subject to OCIG approval. OCIG agrees not to withhold unreasonably such approval. Failure to submit a report notifying OCIG of the material violation will be considered a material breach of this Agreement.

4) Overpayments

If, at the conclusion of an internal investigation described in paragraphs II.D(3) & (4) above, Grady identifies an overpayment amount owed to a state or federal health care program but determines that there was no material violation of Applicable Laws, this Agreement, or Grady's Program, Grady agrees to undertake appropriate corrective actions to eliminate the cause of the overpayment(s) and shall make prompt restitution of the overpayment amount to the appropriate state or federal health care program. Grady also will report in its annual report as described below in paragraph II.F: (i) the cause of

Grady's (and/or its successors' or assigns') overpayment, (ii) the calculation of the overpayment, (iii) Grady's actions to correct the cause of the overpayment, and (v) any further steps Grady plans to take to address the cause of the overpayment and to prevent it from recurring in the future. In refunding the overpayment, Grady shall attach all appropriate claim documentation to enable the payor to verify the amount or the overpayment.

5) A summary of the identification, methodology, and results of all audits, including the implementation of corrective actions and return of any overpayments, shall be included in the annual report to OCIG, which may request additional supporting documentation regarding the annual audit. Grady agrees to provide any additional documentation or reports regarding the audit(s) expeditiously, but no later than within fourteen (14) business days from receipt of HHS-OIG's request, if such information is available.

E. *Confidential Disclosure Program*

As part of its Program, Grady shall establish a confidential disclosure program, such as an anonymous telephone hotline, enabling employees, staff physicians, and other medical personnel and independent contractors to disclose to an identified individual or entity any billings, activities, or arrangements related to the delivery of health care services or items, that may be deemed by the employee, physician or independent contractor to be inappropriate. Grady's confidential disclosure program shall enable employees to make reports to individuals <u>not</u> in that employee's direct chain of command. In order for Grady to assure employees that matters disclosed under Grady's confidential disclosure program will be treated confidentially, in order to allow Grady to receive full and complete details from employees concerning matters disclosed confidentially, and in order for Grady to make an appropriate legal determination concerning the appropriate manner to address matters referred to it under Grady's confidential disclosure program, reports under Grady's confidential disclosure program may be received by Grady's legal department (either directly from the reporting individual or from a Grady agent or representative designated to collect such reports for forwarding to Grady's legal department) so that Grady's legal counsel may determine Grady's legal obligations relating to the matter reported. Matters reported under Grady's confidential disclosure program relating to compliance with this Agreement shall be referred to Grady's Compliance and Ethics Officer and shall be reported to OCIG to the extent required by this Agreement.

Grady shall post its hotline number or any other means of confidential disclosure in a prominent place accessible to each employee and shall distribute such information to each staff physician and independent contractor. Grady shall, as part of the program, require the internal review of any such disclosure and ensure that proper follow-up is conducted. Grady shall include in its annual report to OCIG a summary of communications concerning inappropriate billings, arrangements or activities under the confidential disclosure program, and the results of any internal review, the actions taken to

correct any potential problems identified in such reviews, and the follow-up with the appropriate federal or state governmental agency of such disclosure.

F. *Certification and Reporting Requirements*

1) Certifications. Grady agrees that it shall require annual certification by employees in management and supervisory employees involved in the coding and billing of medical services that they have read and understand Grady's Program policies and procedures and are familiar with the procedures of the hospital's compliance program. Grady agrees to begin requiring annual certification by such employees who will certify: (1) that they have received and reviewed the written policies and procedures, (2) that they understand that compliance with the Program is a condition of their continued employment by Grady, and (3) that they are aware that Grady will taken disciplinary action, up to and including termination, for violation of the principles and practices set forth in the Program's written standards of conduct. The annual certification may be performed during the annual training and education session required in Paragraph II.C. Grady agrees to make all annual certifications available to OCIG upon request. Grady agrees to include in the Annual Report submitted pursuant to the sub-paragraph below verification that all relevant employees, as described above in this paragraph, have signed the certification statement required herein.

2) Reports. All reports, requests for modification and other notification required under this Agreement shall be sent to the OCIG at the following address:

ATTN: Office of Counsel to the Inspector General
Compliance Unit
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building Room 5527
330 Independence Avenue, S.W.
Washington, D.C. 20201
(202) 619-2078 - tel.
(202) 205-0604 - fax

Within its sole discretion, OCIG may share any reports submitted by Grady with the Medicare Fiscal Intermediary, the Health Care Financing Administration, the Georgia Department of Medical Assistance, or other agent of the federal health care programs.

Any reports, records, documents, filings, notification or other information that Grady provides to HHS-OIG under this Agreement may be exempt from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

Interim Report. Within 150 days after the execution of this Agreement by all parties, Grady shall report in writing to the OCIG the steps taken to implement the

requirements of paragraphs II.A-E above, including the type of review performed, the results of the review, and the basis for all revisions, or for the continuation of, the present billing system.

Annual Reports. Grady shall report in writing to the OCIG within thirty (30) days after the first, second, third, fourth, and fifth anniversaries of the signing of this Agreement on the status and findings of Grady compliance efforts. An Annual Report under this paragraph shall not be required on the fifth anniversary of the signing of this Agreement if Grady has submitted a Petition for early termination under Paragraph I of this Agreement and that Petition has been approved by HHS-OIG. In its written reports submitted pursuant to this paragraph, Grady shall separately discuss the review, audit and other measures taken to improve and ensure the accuracy of its pharmacy billing system. In all of the reports required hereunder, Grady shall provide a checklist or index of what is furnished in its report and shall indicate the name or title and telephone number of the appropriate individual it has designated as the contact person for any questions or concerns that may arise relating to the reports or integrity requirements under this Agreement. The anniversary date of this Agreement shall be determined by the date on which the last signatory to this Agreement executed the Agreement.

The Annual Report shall include, among other things, the following:

1. A summary of the actions taken during the preceding twelve (12) months to comply with the terms of this Agreement;

2. A copy of the most recent version of the written policies and procedures as described in paragraph II. herein;

3. Copies of the schedules and training materials for the training and education programs for the previous year;

4. Verification by the Compliance Officer that all relevant employees have signed the certification statement described in paragraph II.F.1 and have received the applicable compliance training and education described in paragraph II.C;

5. A list of the number and type of all calls or communications made to Grady's confidential disclosure program as set forth in paragraph II.E and actions taken by Grady in response to such communications;

6. Summaries of corrective actions taken as a result of internal or external audit reviews or investigations arising from obligations under this Agreement or from requests by the Georgia Department of Medical Assistance and/or the Medicare Fiscal Intermediary;

7. A list of all investigations of alleged violations or misconduct related to the billing of all federal health care programs performed by Grady during the preceding year;

8. A summary of the status and resolution of any investigation reported to HHS-OIG pursuant to paragraph II.D of this Agreement;

9. A summary of any and all disciplinary actions taken against employees for violations of Grady's integrity policies or of state or federal laws and regulations applicable to federal health care programs; and

10. Certification by the Chairperson of the Compliance and Ethics Committee, in accordance with 28 U.S.C. section 1746, that, to the best of his or her knowledge, Grady is in compliance with the terms of this Agreement.

G. *Inspection Rights*

In addition to any other right HHS-OIG may have by statute, regulation or contract, upon reasonable notice during the term of this Agreement, HHS-OIG or any duly authorized representatives may examine, subject to any properly asserted privilege, all Grady books, records and other Grady documents and supporting materials for the purpose of verifying and evaluating Grady's compliance with the terms of this Agreement and applicable law or to verify that Medicare, Medicaid or other federal health care program laws have not been violated.

III. Breach and Default Provisions

Grady's compliance with the terms and conditions in this Agreement shall constitute an element of Grady's present responsibility with regard to participation in federal health care programs. Full and timely compliance by Grady shall be expected throughout the duration of this Agreement with respect to all of the obligations herein agreed to by Grady. HHS-OIG shall, in good faith, attempt to timely respond to Grady with respect to any notice or inquiry made by Grady under the Agreement. As stated below in Section III of this Agreement, any and all modifications to this Agreement (including changes to dates on which an obligation is due to be met) shall be requested in writing and agreed to by HHS-OIG prior to the date on which modification is expected to take effect.

A. *Stipulated Discretionary Penalties for Failure to Comply with Certain Obligations*

It is the purpose and intention of the parties to the Agreement to provide certain intermediate monetary penalties, at the discretion of HHS-OIG, for failure to comply with certain obligations set forth in this Agreement (hereafter referred to as "stipulated

discretionary penalties"). The decision to seek Stipulated Discretionary Penalties is fully discretionary on the part of HHS-OIG as provided in this Agreement.

Failure to comply with certain obligations set forth in this Agreement may lead to the imposition of the following Stipulated Discretionary Penalties accordingly:

A Stipulated Discretionary Penalty of $1,500 for each day Grady fails to comply with any of the following terms or acts:

1. Creation of written policies and procedures as specified in Part II.B. of this Agreement;

2. Notification to OCIG of the development and institution of the education and training program, as required under Part II.C. of this Agreement;

3. Implementation and monitoring of a confidential disclosure program as required under Part II.E. of this Agreement; and

4. Conducting an annual audit as required by Part II.D. of this agreement and submitting its annual written report within the time provided by this Agreement, as described in Part II.F.

5. Hiring a new employee after the date of execution of this Agreement after that employee has been listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in Medicare, Medicaid, or any other federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)). The Stipulated Discretionary Penalty under this subparagraph (5) shall not be demanded if Grady can show it has made a reasonable inquiry as to the status of the employee on the date of hire, as described in Part II.B.2 of this Agreement.

If Grady submits a timely written request to HHS-OIG for an extension of the relevant time period to perform any act or file any notification or report, but such an extension is denied, HHS-OIG agrees not to pursue Stipulated Discretionary Penalties for two (2) business days following Grady's receipt of HHS-OIG's written denial of an extension.

A "timely written request" is a request in writing received by HHS-OIG at least five (5) business days prior to the date by which any act is to be performed or notification or report is to be filed.

B. *Payment Of Stipulated Discretionary Penalties*

Upon finding that Grady has failed to comply with any of the above enumerated obligations, HHS-OIG shall notify Grady by certified mail of (i) Grady's failure to comply; and (ii) HHS-OIG's determination concerning the exercise of its discretion to seek

payment of Stipulated Discretionary Penalties (this notification is hereafter referred to as the "Demand Letter"). The applicable Stipulated Discretionary Penalties shall begin to accrue on the date the breach occurred, which date shall be indicated in the Demand Letter.

Within ten (10) days of receipt of the Demand Letter, Grady shall either: (1) cure the breach to HHS-OIG's satisfaction and pay the applicable Stipulated Discretionary Penalties; or (ii) request a hearing before an HHS administrative law judge to dispute the applicability of the Stipulated Discretionary Penalties provisions, pursuant to the agreed upon provisions set forth in Part III.D. of this Agreement. Failure to exercise either of the above options will result in a material breach of this Agreement. The payment of any Stipulated Discretionary Penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OCIG at the address set forth in Part II.F. of this Agreement.

These provisions for payment of Stipulated Discretionary Penalties shall not affect or otherwise set a standard for the HHS-OIG's determination that Grady has materially breached this Agreement, which decision shall be made at the HHS-OIG's discretion and governed by the provisions in Part III.C. of this Agreement, below.

C. *Remedies for Material Breach of this Agreement*

If Grady engages in conduct that HHS-OIG considers to be a material breach of this Agreement, HHS-OIG may seek exclusion of Grady from participation in the Medicare, Medicaid and any other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon making its determination, HHS-OIG shall notify Grady of the alleged material breach by certified mail and of its intent to exclude as a result thereof (this letter shall be referred to hereinafter as the "Intent to Exclude Letter"). Grady shall have thirty-five (35) days from the date of the letter to proceed as follows:

(1) cure the alleged material breach; or
(2) demonstrate to the HHS-OIG's satisfaction that: (a) Grady is in full compliance with this Agreement; or (b) the material breach cannot be cured within the thirty-five (35) day period, but that Grady has begun to take action to cure the material breach, that Grady will pursue such action with due diligence, and that Grady will give the HHS-OIG a timetable for curing the material breach.

If at the conclusion of the thirty-five day period (or other specific period as subsequently agreed by HHS-OIG and Grady), Grady fails to cure the material breach or otherwise fails to demonstrate either one of the requirements in (2) above, Grady agrees to its immediate exclusion from participation in the Medicare, Medicaid and any other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). The exclusion shall have national effect and will also apply to all other federal procurement and non-procurement programs.

For purposes of this section, a "material breach" shall mean: (i) a failure to report a material billing violation, take corrective action and pay the appropriate refunds, as provided in section II.D. of this Agreement; or (ii) repeated or flagrant violations of the obligations under this Agreement, including, but not limited to, the obligations addressed in section II of this Agreement.

In connection with the HHS-OIG's determination to exclude Grady pursuant to this provision, Grady shall have the right to dispute the HHS-OIG's determination in accordance with the agreed upon provisions set forth in section III.D of this Agreement.

D. *Dispute Resolution*

Upon HHS-OIG's delivery to Grady of its Demand Letter or of its Intent to Exclude Letter, and as an agreed upon contractual remedy for the resolution of disputes arising under the obligations of this Agreement, Grady shall be afforded some review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. § 1005 as if they applied to the Stipulated Discretionary Penalties or exclusion sought pursuant to this Agreement. Specifically, the HHS-OIG's determination to demand payment of Stipulated Discretionary Penalties or to seek exclusion shall be subject to review by an HHS administrative law judge in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. The administrative law judge's decision, in turn, may be appealed to HHS's Departmental Appeals Board ("DAB") in a manner consistent with the provisions of 42 C.F.R. § 1005.21.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues a proceeding for Stipulated Discretionary Penalties under this section shall be: (i) whether Grady was in full and timely compliance with the obligations of this Agreement for which HHS-OIG demands payment; (ii) whether Grady failed to cure; and (iii) the period of noncompliance. Grady shall have the burden of proving that it was in full and timely compliance and the steps taken to effect the cure, if any. The HHS-OIG shall have the burden of proving that Grady failed to cure. For the purposes of paying Stipulated Discretionary Penalties under this Agreement, and if Grady chooses to seek review in lieu of curing the breach and paying the Stipulated Discretionary Penalties, as set forth above, the administrative law judge's decision shall give rise to Grady's obligation to pay. Thus, payment will be due immediately after the issuance of the administrative law judge's decision. Grady's election of their contractual right to appeal to the DAB shall not excuse its obligation to make payment upon the issuance of the administrative law judge's decision.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for *exclusion* <u>based on a breach of this Agreement shall be:</u>

(i) whether Grady was in material breach of one or more of its obligations under this Agreement; and (ii) whether such breach was continuing on the date of the Intent to Exclude Letter. For purposes of the exclusion herein agreed to in the event of breach of this Agreement, the administrative law judge's decision shall be deemed to make the exclusion effective, at which time the HHS-OIG may proceed with its exclusion of Grady, if the administrative law judge finds in favor of the HHS-OIG. The administrative law judge's decision may be appealed to the DAB in a manner consistent with the provision in 42 C.F.R. § 1005.21.

Neither the review by an administrative law judge nor the potential subsequent review of the administrative law judge's decision by the DAB, as provided for above, shall be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this Agreement agree that the DAB's decision shall be final for all purposes and hereby waive any right they may have to further administrative or judicial review in any forum.

All notices under any of the aforementioned proceedings shall be given to the HHS-OIG in accordance with section II.F of this Agreement.

IV. Notice to Grady

All written notices to Grady provided under this Agreement shall be sent to:

Edward J. Renford
Chief Executive Officer/President
The Grady Health System
80 Butler Street SE
Atlanta, Georgia 30335
(404)-616-4252-tel
(404)-616-9204-fax

V. Document and Record Retention

Grady shall maintain for inspection documents and records relating to Medicare, Medicaid and federal health care program reimbursement, and all documents and workpapers generated under this Agreement, for a minimum period of six (6) years from their creation, or for a longer period of time if required by state law.

VI. Costs Related to Compliance Plan and Settlement

Grady agrees that all costs, as defined in FAR 31.205-47, incurred on behalf of Grady's current or former officers or directors arising from, related to, or in connection with the Government's investigation related to the action described in the Settlement Agreement, and Grady's defense and settlement thereof, including any settlement payments or interest thereon provided by the civil Settlement Agreement entered into by Grady and

the United States, shall be unallowable for Medicare, Medicaid, or other Government contract accounting purposes. Grady agrees to account separately for such costs. Grady shall treat these costs as unallowable costs for Government contract accounting purposes and shall account separately for such costs. Grady shall also treat as unallowable costs during the term of this Agreement the costs of implementing those compliance provisions contained herein relating specifically to Grady's outpatient pharmacy billings and related training of pharmacy billing personnel, the costs of which shall be accounted for separately.

Nothing in this Agreement is intended to prohibit Grady from properly claiming as allowable costs for Medicare, Medicaid, or other Government contract accounting purposes any expenditure otherwise allowable under applicable law or regulation, including, but not limited to, expenditures for infrastructure or information systems technology, except as specifically provided above.

VII. Modification

Grady and HHS-OIG agree that any modification to this Corporate Integrity Agreement must be made by written consent of the parties (as defined herein) to this Agreement.

VIII. Integration Clause

This Agreement and the Settlement Agreement and Release entered into by HHS/OIG and Grady embody the entire agreement and understanding of the parties with respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to in this Agreement. This Agreement, together with the Settlement Agreement and Release, supersedes any and all prior agreements and understandings between the parties with respect to such subject matter.

IX. Counterparts

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of or on behalf of each Party appear on each counterpart, but it shall be sufficient that the signature of or on behalf of each Party appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in any proof of this Agreement to produce or account for more than any counterpart or counterparts containing signatures of both Parties.

IN WITNESS WHEREOF, the parties hereto affix their signatures.

FOR THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES:

6-1-98
Date

Lewis Morris
Assistant Inspector General
For Legal Affairs
Office of Inspector General
Department of Health and Human Services

FOR GRADY HEALTH SYSTEM

7/7/98
Date

Edward J. Renford
Chief Executive Officer/President
The Grady Health System
80 Butler Street SE
Atlanta, Georgia 30335

Approved as to legal form and content:

July 10, 1998
Date

William R. Mitchelson, Jr., Esq.
Alston & Bird LLP
Counsel for Grady Health System