

APPENDIX A
CERTIFICATION OF COMPLIANCE AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
FULTON MANOR, INC., d/b/a FULTON MANOR CARE CENTER

I. PREAMBLE

Fulton Manor, Inc., d/b/a Fulton Manor Care Center, (Fulton) hereby enters into this Certification of Compliance Agreement (CCA) with the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS). Contemporaneously with this CCA, Fulton is entering into a Settlement Agreement with the OIG. The effective date of this CCA shall be the date on which the final signatory of this CCA executes this CCA (Effective Date). The period of certification obligations assumed by Fulton shall be three years from the Effective Date of this CCA. Each one-year period, beginning with the one-year period following the Effective Date, shall be referred to as a "Reporting Period."

II. CERTIFICATION REQUIREMENTS

A. Ineligible Person. For the purpose of this CCA, an "Ineligible Person" shall include an individual or entity who: (a) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or (b) has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

B. Screening. Fulton currently has in place and shall maintain for the duration of this CCA policies and procedures requiring the screening of all current and prospective owners, officers, directors, employees, contractors, and agents prior to engaging their services and requiring the screening of all physicians prior to granting medical staff or admitting privileges. The policies and procedures include the following elements.

1. To prevent hiring or contracting with any Ineligible Person, Fulton screens all prospective owners, officers, directors, employees, contractors, and agents prior to engaging their services and screens all physicians prior to granting medical staff or admitting privileges by (a) requiring applicants to disclose whether they are Ineligible Persons; and (b) querying the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the

HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://oig.hhs.gov>).

2. Fulton also performs:

a. through the HHS/OIG List of Excluded Individuals/Entities, at least quarterly screening of its current owners, officers, directors, employees, contractors, agents, and physicians with staff or admitting privileges to ensure that they are not Ineligible Persons; and

b. through the General Services Administration's List of Parties Excluded from Federal Programs, at least annually screening of its current owners, officers, directors, employees, contractors, agents, and physicians with staff or admitting privileges to ensure that they are not Ineligible Persons;

and has a policy in place that requires an individual to disclose any debarment, exclusion, suspension, or other event that makes the individual an Ineligible Person.

3. If Fulton has actual notice that an owner, officer, director, employee, contractor, or agent has become an Ineligible Person, then Fulton shall remove such person from responsibility for, or involvement with, Fulton's business operations related to the Federal health care programs and remove such person from any position for which the person's compensation or the items or services furnished, ordered, or prescribed by the person are paid in whole or in part, directly or indirectly, by Federal health care programs or otherwise with Federal funds, at least until such time as the person is reinstated into participation in the Federal health care programs.

4. If Fulton has actual notice that an owner, officer, director, employee, contractor, or agent is charged with a criminal offense that falls within the ambit of 42 U.S.C. §§ 1320a-7(a), 1320a-7(b)(1)-(3), or is proposed for exclusion, Fulton shall take all appropriate actions to ensure that the responsibilities of that person have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or the accuracy of any claims submitted to any Federal health care program.

5. If Fulton has actual notice that a physician with staff or admitting privileges becomes an Ineligible Person, Fulton shall ensure that the physician does not furnish, order, or prescribe any items or services payable in whole or in part by any Federal health care.

C. Training. Fulton currently has in place and shall maintain for the duration of this CCA a policy and procedure requiring the annual training of all owners, officers, directors, employees, contractors and agents who work more than 160 hours per year, and physicians with staff or admitting privileges on Fulton's policies and procedures regarding Ineligible Persons. The annual training includes the following elements:

1. Fulton's responsibilities not to hire or contract with Ineligible Persons;
2. Fulton's mandatory disclosure policy regarding ineligibility;
3. The mechanisms for determining whether a person is an Ineligible Person; and
4. The potential consequences to Fulton of hiring or contracting with an Ineligible Person.

D. Annual Report. Fulton shall certify annually to OIG that Fulton has been in compliance with Sections II.B and II.C above for the preceding Reporting Period (Annual Certification). The first Annual Certification shall be received by OIG no later than 30 days after the end of the first Reporting Period. Subsequent Annual Certifications shall be received by OIG no later than the anniversary date of the due date of the first Annual Certification. A model Certification is attached as Exhibit A to this CCA.

E. Notifications and Submission of Annual Certifications. Unless otherwise specified in writing after the Effective Date, all Annual Certifications required under this CCA shall be submitted to the following addresses:

OIG:

Administrative and Civil Remedies Branch
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

Cohen Building, Room 5527
330 Independence Avenue, S.W.
Washington, DC 20201
Telephone: 202-619-2078
Facsimile: 202-205-0604

Fulton:

Verna Taylor, Administrator
Fulton Manor Care Center
520 Manor Drive
Fulton, MO 65251
Telephone: 573-642-6834
Facsimile: (573) 642-5767

Unless otherwise specified, all Annual Reports required by this CCA may be made by certified mail, overnight mail, hand delivery, or other means, provided that there is proof that such report or notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

F. OIG Inspection, Audit, and Review Rights. In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine or request copies of Fulton's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Fulton's locations for the purpose of verifying and evaluating: (a) Fulton's compliance with the terms of this CCA; and (b) Fulton's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Fulton to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit, or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Fulton's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. Fulton shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Fulton's employees may elect to be interviewed with or without a representative of Fulton present.

G. Document and Record Retention. Fulton shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this CCA, for six years (or longer if otherwise required by law) from the Effective Date.

III. BREACH AND DEFAULT PROVISIONS

Fulton is expected to fully and timely comply with all of the Certification Requirements set forth in this CCA.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Fulton and OIG hereby agree that failure to comply with the Certification Requirements set forth in this CCA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of \$750 (which shall begin to accrue on the day after the date the obligation became due) for each day Fulton fails to maintain the policies and procedures set forth in Section II.B and II.C of this CCA.

2. A Stipulated Penalty of \$1,000 (which shall begin to accrue on the day after the date the obligation became due) for each day Fulton fails to submit the Annual Certifications to OIG in accordance with the requirements of Section II.D by the stated deadlines for submission.

3. A Stipulated Penalty of \$750 for each day Fulton fails to grant access to the information or documentation as required in Section II.F of this CCA. (This Stipulated Penalty shall begin to accrue on the date Fulton fails to grant access.)

4. A Stipulated Penalty of \$5,000 for each false certification submitted by or on behalf of Fulton as part of its Annual Certifications or otherwise required by this CCA.

5. A Stipulated Penalty of \$750 for each day Fulton fails to comply fully and adequately with any obligation of this CCA. OIG shall provide notice (Notice) to Fulton stating the specific grounds for its determination that Fulton has failed to comply fully and adequately with the CCA obligation(s) at issue and steps Fulton shall take to comply with the CCA. (This Stipulated Penalty shall begin to accrue 10 days after the date Fulton receives this Notice from OIG of the failure to comply.) A Stipulated Penalty

as described in this Subsection shall not be demanded for any violation for which OIG has sought a Stipulated Penalty under Subsections 1-4 of this Section.

B. Timely Written Requests for Extensions. Fulton may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any Annual Certification required by this CCA. Notwithstanding any other provision in this Section, if OIG grants the timely written request with respect to an act or report, Stipulated Penalties for failure to perform the act or file the report shall not begin to accrue until one day after Fulton fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this Section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the report shall not begin to accrue until three business days after Fulton receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Fulton has failed to comply with any of the obligations described in Section III.A and after determining that Stipulated Penalties are appropriate, OIG shall notify Fulton of: (a) Fulton's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is referred to as the "Demand Letter").

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Fulton shall either: (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties; or (b) request a hearing before an HHS administrative law judge (ALJ) to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in Section III.E. In the event Fulton elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Fulton cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CCA and shall be grounds for exclusion under Section III.D.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to: "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in Section II.E.

4. *Independence from Material Breach Determination.* Except as set forth in Section III.D.1.b, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that Fulton has materially breached this CCA, which decision shall be made at OIG's discretion and shall be governed by the provisions in Section III.D, below.

D. Exclusion for Material Breach of this CCA.

1. *Definition of Material Breach.* A material breach of this CCA means:

- a. a repeated or flagrant violation of the obligations under this CCA, including, but not limited to, the obligations addressed in Section III.A; or
- b. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Section III.C.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CCA by Fulton constitutes an independent basis for Fulton's exclusion from participation in the Federal health care programs. Upon a determination by OIG that Fulton has materially breached this CCA and that exclusion is the appropriate remedy, OIG shall notify Fulton of: (a) Fulton's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is referred to as the "Notice of Material Breach and Intent to Exclude").

3. *Opportunity to Cure.* Fulton shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

- a. Fulton is in compliance with the requirements of the CCA cited by OIG as being the basis for the material breach;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30-day period, but that: (i) Fulton has begun to take action to cure the material breach; (ii) Fulton is pursuing such action with due

diligence; and (iii) Fulton has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Fulton fails to satisfy the requirements of Section III.D.3, OIG may exclude Fulton from participation in the Federal health care programs. OIG shall notify Fulton in writing of its determination to exclude Fulton (this letter shall be referred to as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in Section III.E, below, the exclusion shall go into effect 30 days after the date of Fulton's receipt of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and nonprocurement programs. Reinstatement to program participation is not automatic. After the end of the period of exclusion, Fulton may apply for reinstatement by submitting a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

E. Dispute Resolution.

1. *Review Rights.* Upon OIG's delivery to Fulton of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CCA, Fulton shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. §1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CCA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS ALJ and, in the event of an appeal, the HHS Departmental Appeals Board (DAB), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within 10 days after receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days after receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CCA shall be: (a) whether Fulton was in full and timely compliance with the requirements of this CCA for which OIG demands payment; and (b) the period of noncompliance. Fulton shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. OIG shall not have the right to appeal to the DAB an adverse ALJ decision related to Stipulated Penalties. If the ALJ agrees with OIG with regard to a finding of a breach of

Consequently, the parties to this CCA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this CCA.

IV. EFFECTIVE AND BINDING AGREEMENT

Fulton and OIG agree as follows:

A. This CCA shall be binding on the successors, assigns, and transferees of Fulton;

B. This CCA shall become final and binding on the date the final signature is obtained on the CCA;

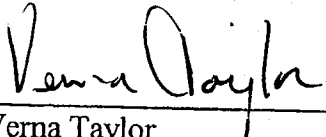
C. Any modifications to this CCA shall be made with the prior written consent of the parties to this CCA;

D. OIG may agree to a suspension of Fulton's obligations under this CCA in the event of Fulton's cessation of participation in Federal health care programs. If Fulton withdraws from participation in Federal health care programs and is relieved of its CCA obligations by OIG, Fulton shall notify OIG at least 30 days in advance of Fulton's intent to reapply as a participating provider or supplier with any Federal health care program. Upon receipt of such notification, OIG shall evaluate whether the CCA should be reactivated or modified;

E. The undersigned Fulton signatories represent and warrant that they are authorized to execute this CCA. The undersigned OIG signatory represents that he is signing this CCA in his official capacity and that he is authorized to execute this CCA; and

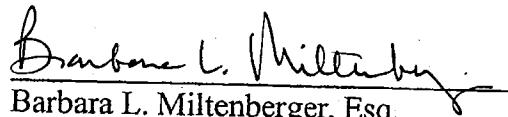
F. This CCA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same CCA. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this CCA.

ON BEHALF OF FULTON MANOR, INC. D/B/A FULTON MANOR CARE CENTER



Verna Taylor
Administrator
Fulton Manor, Inc. d/b/a Fulton Manor Care Center


4-10-07
DATE



Barbara L. Miltenberger, Esq.
Husch & Eppenberger, LLC
Counsel for Fulton Manor, Inc.
d/b/a Fulton Manor Care Center

April 10, 2007
DATE

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**



Gregory E. Demske
Assistant Inspector General for Legal Affairs
Office of Inspector General
United States Department of Health and Human Services

4/13/07
DATE

**EXHIBIT A TO
CERTIFICATION OF COMPLIANCE AGREEMENT
ANNUAL CERTIFICATION**

For purposes of this Certification, an "Ineligible Person" shall include an individual or entity who: (a) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or (b) has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

To prevent hiring or contracting with any Ineligible Person, Fulton Manor Care Center (Fulton) screens all prospective owners, officers, directors, employees, contractors, and agents prior to engaging their services and screens all physicians prior to granting medical staff or admitting privileges by: (a) requiring applicants to disclose whether they are Ineligible Persons; and (b) querying the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://oig.hhs.gov>). Fulton also performs, at least quarterly through the HHS/OIG List of Excluded Individuals/Entities and at least annually through the General Services Administration's List of Parties Excluded from Federal Programs, screening of its current owners, officers, directors, employees, contractors, agents, and physicians with staff or admitting privileges to ensure that they are not Ineligible Persons, and has a policy in place that requires an individual to disclose any debarment, exclusion, suspension, or other event that makes the individual an Ineligible Person.

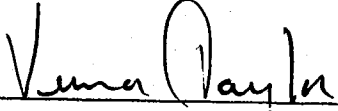
Fulton currently has in place a policy and procedure that requires, if Fulton has actual notice that an owner, officer, director, employee, contractor, or agent has become an Ineligible Person, then Fulton must remove such person from responsibility for, or involvement with, Fulton's business operations related to the Federal health care programs and remove such person from any position for which the person's compensation or the items or services furnished, ordered, or prescribed by the person are paid in whole or in part, directly or indirectly, by Federal health care programs or otherwise with Federal funds, at least until such time as the person is reinstated into participation in the Federal health care programs. Fulton also currently has in place a policy and procedure that requires, if Fulton has actual notice that an owner, officer, director, employee, contractor, or agent is charged with a criminal offense that falls within the ambit of 42 U.S.C. §§ 1320a-7(a), 1320a-7(b)(1)-(3), or is proposed for exclusion, Fulton shall take all appropriate actions to ensure that the responsibilities of

that person have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or the accuracy of any claims submitted to any Federal health care program. Fulton also currently has in place a policy and procedure that requires, if Fulton has actual notice that a physician with staff or admitting privileges becomes an Ineligible Person, that Fulton shall ensure that the physician does not furnish, order, or prescribe any items or services payable in whole or in part by any Federal health care.

Fulton currently has in place a policy and procedure that requires annual training of all owners, officers, directors, employees, contractors and agents who work more than 160 hours per year, and physicians with staff or admitting privileges concerning Fulton's policies and procedures regarding Ineligible Persons, specifically including, but not limited to, the policies and procedures described in this Certificate. The content of the annual training performed under this policy and procedure includes a description of Fulton's responsibilities not to hire or contract with Ineligible Persons, its mandatory disclosure policy regarding ineligibility, the mechanisms for determining whether a person is an Ineligible Person, and the potential consequences to Fulton of hiring or contracting with an Ineligible Person.

Nothing in this Certification affects the responsibility of (or liability for) Fulton to refrain from billing Federal health care programs for items or services furnished, ordered, or prescribed by an Ineligible Person. Fulton understands that items or services furnished by excluded persons are not payable by Federal health care programs and that Fulton may be liable for overpayments and criminal, civil, and administrative sanctions for employing or contracting with an excluded person regardless of whether Fulton meets the requirements of this Certification.

The undersigned signatory hereby declares, under penalty of perjury, that the foregoing is true and correct. The undersigned signatory represents and warrants that he is authorized to execute this certification on behalf of Fulton.


VERNA TAYLOR
Administrator
Fulton Nursing Manor Care Center

4-10-07
Date