SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively "the United States"), and Dr. Ray A. Silao, M.D. ("Dr. Silao") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Dr. Silao, a physician licensed in Arizona, provided health care services to Medicare beneficiaries from January 1, 2004 through October 31, 2008.

B. The United States contends that Dr. Silao submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh.

C. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against Dr. Silao based on materially false claims for reimbursement that he submitted or caused to be submitted to Medicare for CPT code 93701 from January 1, 2004 through October 31, 2008. The United States contends that Medicare reimburses for CPT code 93701 only when certain medical indications, as defined by Medicare regulations, are present and that Dr. Silao submitted or caused to be submitted to Medicare claims for reimbursement for CPT code 93701 with respect to several Medicare beneficiaries who did not meet any of the required medical indications. The conduct described in this Paragraph is collectively referred to herein as the "Covered Conduct."

D. Dr. Silao denies and disputes all of the foregoing contentions of the United States as to both validity and amount.

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

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

TERMS AND CONDITIONS

1. Dr. Silao shall pay to the United States $92,000.00 ("the Settlement Amount") by electronic funds transfer within twenty (20) days of the Effective Date of this Agreement pursuant to written instructions to be provided by the United States Attorney's Office for the District of Arizona.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Dr. Silao's full payment of the Settlement Amount, the United States releases Dr. Silao from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Dr. Silao from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

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

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory and permissive exclusion from Federal health care programs;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

g. Any liability for failure to deliver goods or services due; and

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Dr. Silao waives and shall not assert any defenses he may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. Dr. Silao fully and finally releases the United States and its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every

kind and however denominated) that Dr. Silao has asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any state payer, related to the Covered Conduct; and Dr. Silao agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Dr. Silao in connection with:

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

(3) Dr. Silao's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement; and

(5) the payment Dr. Silao makes to the United States pursuant to this Agreement;

are unallowable costs for government contracting purposes and under the Medicare Program,

Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP") (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Dr. Silao, and Dr. Silao shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any state Medicaid program or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Dr. Silao to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Dr. Silao further agrees that within ninety (90) days of the Effective Date of this Agreement, he shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any state Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by or on behalf of Dr. Silao, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Dr. Silao agrees that the United States, at a minimum, shall be entitled to recoup from Dr. Silao any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The

United States reserves its rights to disagree with any calculations submitted by Dr. Silao on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Dr. Silao's cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Dr. Silao's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

9. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 10 (waiver for beneficiaries paragraph), below.

10. Dr. Silao agrees that he waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

11. Dr. Silao warrants that he has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Dr. Silao, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Dr. Silao

was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

12. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, Dr. Silao commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Dr. Silao's debts, or seeking to adjudicate Dr. Silao as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Dr. Silao or for all or any substantial part of Dr. Silao's assets, Dr. Silao agrees as follows:

a. Dr. Silao's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Dr. Silao shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Dr. Silao's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Dr. Silao was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Dr. Silao.

b. If Dr. Silao's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Dr. Silao for the claims that would otherwise be covered by the releases provided in Paragraph 2, above. Dr. Silao agrees that (i) any such claims, actions, or proceedings brought by the United

States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Dr. Silao shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Dr. Silao shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within thirty (30) calendar days of written notification to Dr. Silao that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on November 7, 2007; and (iii) the United States has a valid claim against Dr. Silao for treble damages and penalties for a False Claims Act cause of action, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Dr. Silao acknowledges that his agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

13. The Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. The Parties and signatories to this Agreement represent that they freely and voluntarily enter this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Arizona. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all the Parties to this Agreement and shall not, therefore, be construed against any of the Parties for that reason in any subsequent dispute.

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

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

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

19. This Agreement is binding on Dr. Silao's successors, transferees, heirs, and assigns.

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

21. This Agreement is effective on the date of signature of the last signatory to the Agreement ("the Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 12/22/10 **BY:** _____

LON R. LEAVITT
Assistant United States Attorney
District of Arizona

DATED: 12/21/10 **BY:** _____

GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

DR. RAY A. SILAO, M.D.

DATED: 11/19/10 **BY:** _____
DR. RAY A. SILAO, M.D.

DATED: 12/2/2010 **BY:** _____
JIM BELANGER
Coppersmith Schermer & Brockelman PLC
Counsel for Dr. Ray A. Silao, M.D.