

## 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 Rhode Island Hospital (hereafter collectively referred to as "the Parties"), through their authorized representatives.

### RECITALS

A. Rhode Island Hospital is incorporated as a non-profit corporation in Rhode Island. Rhode Island Hospital is located in Providence, Rhode Island.

B. The United States contends that Rhode Island Hospital 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. §§ 1395-1395kkk-1 and the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396w-5.

C. The United States contends that it has certain civil claims against Rhode Island Hospital arising from the following: For the submission of claims to Medicare and Medicaid during the period from January 1, 2004, through, December 31, 2009, for medically unnecessary overnight hospital admissions for patients who underwent stereotactic radiosurgery, otherwise known as gamma knife treatment. More specifically, the United States contends that certain of Rhode Island Hospital's claims for reimbursement for one-night overnight admissions to Medicare and Medicaid falsely represented that the admissions were medically necessary when, in fact, they were not.

The conduct referred to in this Paragraph is hereinafter referred to as "the Covered Conduct."

D. This Settlement Agreement is neither an admission of liability by Rhode Island Hospital nor a concession by the United States that its claims are not well founded.

E. 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. Rhode Island Hospital shall pay to the United States Five Million Two Hundred Seventy-Seven Thousand Nine Hundred and Forty-One Dollars (\$5,277,941) ("Settlement Amount") and interest on the Settlement Amount at a rate of 2.25% from September 19, 2011, by electronic funds transfer pursuant to written instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the District of Rhode Island no later than three days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Rhode Island Hospital's full payment of the Settlement Amount, the United States releases Rhode Island Hospital together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, affiliates, agents, servants, employees and the successors and assigns of any of them 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 Rhode Island Hospital and/or its officers,

directors, and employees 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 release given in paragraph 2 of this Agreement, 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 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;

5. Rhode Island Hospital waives and shall not assert any defenses Rhode Island Hospital 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. Rhode Island Hospital fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and

expenses of every kind and however denominated) that Rhode Island Hospital has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, 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 Rhode Island Hospital 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. Rhode Island Hospital agrees to the following:

(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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Rhode Island Hospital, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit and civil investigation of the matters covered by this Agreement;
- (3) Rhode Island Hospital's investigation, defense, and corrective actions undertaken in response to the United States' audit and civil investigation 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 Rhode Island 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 in nonreimbursable cost centers by Rhode Island Hospital, and Rhode Island Hospital 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 Rhode Island Hospital or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Rhode Island Hospital further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Rhode Island Hospital or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Rhode Island Hospital agrees that the United States, at a minimum, shall be entitled to recoup from Rhode Island Hospital 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 Rhode Island Hospital or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Rhode Island Hospital or any of its subsidiaries or affiliates' 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 Rhode Island Hospital'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 as described in this Agreement and to the extent provided for in Paragraph 10 (waiver for beneficiaries paragraph), below.

10. Rhode Island Hospital agrees that it 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. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

13. 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 Rhode Island. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

17. This Agreement is binding on Rhode Island Hospital's successors, transferees, heirs, and assigns.

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

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

RHODE ISLAND HOSPITAL

DATED: 2/19/12

BY:   
TIMOTHY J. BABINEAU, M.D.  
President and CEO Rhode Island Hospital

DATED: 2/9/12

BY:   
MICHAEL K. FEE  
Ropes & Gray LLP  
Counsel for Rhode Island Hospital

THE UNITED STATES OF AMERICA

DATED: 2/10/12

BY:



DULCE DONOVAN  
Assistant United States Attorney  
District of Rhode Island

DATED: 2/13/12

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