

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), acting through the United States Department of Justice and on behalf of the Office of Inspector General ("HHS-OIG") of the Department of Health and Human Services ("HHS") (collectively, the "United States"); the State of Tennessee, acting through the Attorney General's Office and on behalf of TennCare ("TennCare"); the Relator, Health Outcomes Technologies ("Relator"); and Baptist Hospital of Cocke County ("BHCC") (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. BHCC is a health care provider, and submitted or caused to be submitted, claims to Medicare and TennCare for the inpatient treatment of Medicare and TennCare beneficiaries.

B. The United States contends that BHCC 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. §§ 1395-1395ddd (1997) and the Medicaid Program ("Medicaid/TennCare"), 42 U.S.C. §§ 1396-1396v (1997).

C. Medicare and TennCare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by the hospital.

D. The Medicare and TennCare programs rely upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹

E. The United States conducted an investigation into inpatient payment claims submitted to Medicare and TennCare by hospitals with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria").

F. The United States contends that it has certain civil and administrative claims against BHCC under certain federal statutes and/or common law doctrines and/or administrative claims in that, during the period from January 1993 through February 1996, BHCC submitted or caused to be submitted claims to the Medicare and TennCare programs with the principal diagnosis code of 482.89 that were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, BHCC received payments to which it was not entitled.

G. The State of Tennessee also contends that it has certain claims against BHCC under its laws for claims to the TennCare program concerning the Covered Conduct.

H. The United States also contends that it has certain administrative claims against BHCC under the provisions for permissive exclusion from Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

I. BHCC has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for which claims were

¹ International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM").

submitted to the Medicare and Medicaid/TennCare programs with the principal diagnosis code of 482.89, and BHCC represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

J. BHCC does not admit the contentions of the United States or State of Tennessee as set forth.

K. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. BHCC agrees to pay to the United States Four Hundred Forty-Six Thousand Three Hundred Eighty-Four Dollars and Thirty-Four Cents \$446,384.34 (the "Settlement Amount") as follows: BHCC agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Tennessee. BHCC agrees to make this electronic funds transfer no later than June 30, 2000.

2. BHCC agrees to cooperate fully and in good faith with the United States in the investigation or prosecution of any person concerning the Covered Conduct, and concerning similar matters involving other hospitals and others, by providing accurate, truthful, and complete information whenever, wherever, to whomever and in whatever form the United States reasonably

may request. Nothing in this Paragraph, however, affects any privilege that might be available to BHCC or any statutory or regulatory obligation of BHCC, or BHCC's ability to object to the request on the grounds of such privilege or obligation; the United States reserves its right to contest the assertion of any such privilege or obligation by BHCC.

BHCC agrees to the following specific representations and undertakings:

a. BHCC will use its best efforts to provide such information, and related documents, within ten (10) working days of receipt of a request. If necessary, BHCC will notify the United States of any difficulty in timely complying with any such request, and will advise the United States of the additional amount of time estimated to be needed to respond to such request.

b. BHCC understands that it has undertaken an obligation to provide truthful and accurate information and testimony by itself and through its employees. BHCC agrees that it shall take no action which could cause any person to fail to provide such testimony (other than the assertion of a privilege or statutory or regulatory obligation), or could cause any person to believe that the provision of truthful and accurate testimony could adversely affect such person's employment or any contractual relationship.

c. Should it be judged by the United States that BHCC has failed to cooperate fully or has intentionally given false, misleading, or incomplete information or testimony, or has otherwise violated any provision of this Agreement, BHCC thereafter shall be subject to prosecution for any criminal violation of which the United States has knowledge, including, but not limited to, perjury, obstruction of justice, and false statements.

3. BHCC has entered into a Corporate Integrity Agreement with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. BHCC will implement its

obligations under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

4. BHCC releases the United States, HHS, the State of Tennessee, and each of their agencies, officers, agents, employees, and contractors and their employees and Relator from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct, including the investigation of the Covered Conduct and this Agreement.

5. Subject to the exceptions in Paragraph 9 below, in consideration of the obligations of BHCC set forth in this Agreement, conditioned upon BHCC's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in paragraph 4), and Relator agree to release BHCC, its predecessors, successors, assigns, affiliates, and employees from any civil or administrative monetary claim the United States has or may have 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, breach of contract and fraud, for the Covered Conduct. The United States expressly reserves any claims against any entities and individuals other than BHCC or its employees.

6. Subject to the exceptions in Paragraph 9 below, in consideration of the obligations of BHCC set forth in this Agreement, conditioned upon BHCC's payment in full of the Settlement Amount, the State of Tennessee (on behalf of itself, its officers, agents, and its agencies and departments) agrees to release BHCC, its predecessors, successors, assigns, affiliates, and employees from any civil or administrative monetary claim the State of Tennessee has or may have for the time

period specified for the Covered Conduct. The State of Tennessee expressly reserves any claims against any entities and individuals other than BHCC and its employees.

7. In consideration of the obligations of BHCC set forth in this Agreement and the Corporate Integrity Agreement contained in Exhibit A, conditioned upon BHCC's payment in full of the Settlement Amount, the HHS-OIG agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against BHCC under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Exhibit A, and as reserved in this Paragraph. The HHS-OIG expressly reserves all rights to comply with any statutory obligations to exclude hospitals or others from Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion). Nothing in this Paragraph precludes the HHS-OIG from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 5 or 9. No individuals are released under this paragraph.

8. The State of Tennessee recognizes that this Agreement is intended to allow BHCC to continue to participate in the TennCare programs and is intended to release BHCC from an action to impose TennCare program exclusion upon BHCC on the basis of the Covered Conduct except as reserved in Paragraph 7 and 9. The parties recognize, however, that participation in the Tennessee Medicaid/TennCare program is dependent upon acceptance into a network by a Managed Care Organization ("MCO") and that MCOs have discretion, so long as consistent with federal and state law, to set policies for participation in their networks. The Office of the Tennessee Attorney General will not attempt to influence any MCO to exclude BHCC from participation in an MCO network due

to the Covered Conduct. BHCC acknowledges that the State of Tennessee does not have the authority to release BHCC from any claims or actions for debarment or otherwise which may be asserted by private insurers or similar entities such as MCOs and Behavioral Health Organizations that are paid on a capitated or other basis for providing health care to the State's Medicaid/TennCare recipients. However, Department of Health, TennCare Bureau, will not exclude BHCC from participation in the Medicaid/TennCare program based upon the Covered Conduct unless required to do so by the United States Department of Health and Human Services.

9. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including BHCC) are any and all of the following:

- (1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability; however, the United States Attorney for the Eastern District of Tennessee agrees that it will not use this Settlement Agreement against BHCC during any criminal prosecution relating to the Covered Conduct during its case in chief;
- (3) Except as explicitly otherwise stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- (4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- (5) Any claims based upon such obligations as are created by this Agreement;

(6) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by BHCC;

(7) Any claims based on a failure to deliver items or services billed;

(8) Any civil claims against individuals, including current or former directors, officers, employees, agents or shareholders of BHCC who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorney's Manual), are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the covered conduct.

(9) Claims under any consumer protection acts of the State of Tennessee.

10. BHCC waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy or Excessive Fines Clause of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. BHCC agrees that this settlement is not punitive in purpose or effect. 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.

11. The Amount that BHCC must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will 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 BHCC 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.

12. BHCC agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd(1997) and 1396-1396v(1997), and the regulations promulgated thereunder) incurred by or on behalf of BHCC in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) BHCC's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees and the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement), (4) the negotiation of this Agreement and the Corporate Integrity Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid/TennCare Program, TRICARE Program, Veterans Affairs Program, and Federal Employee Health Benefits Program ("FEHBP") (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by BHCC, and BHCC will 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 BHCC or any of its subsidiaries to the Medicare, Medicaid/TennCare, TRICARE, VA or FEHBP programs.

13. BHCC further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors,

and Medicaid/TennCare, VA and FEHBP fiscal agents, any unallowable costs (as defined in Paragraph 12) 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 BHCC or any of its subsidiaries, and will 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. BHCC agrees that the United States will be entitled to recoup from BHCC any overpayment 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 BHCC or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in Paragraph 12) on BHCC or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

14. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

15. BHCC agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. BHCC waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

16. BHCC expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (1) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to BHCC, within the meaning of 11 U.S.C. § 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

17. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. BHCC represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Tennessee, except that disputes arising under the Corporate Integrity Agreement (attached as Exhibit A) shall be resolved exclusively under the dispute resolution provisions set forth in that Agreement.

20. This Agreement, including Exhibit A which is incorporated by reference, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only BHCC and HHS-OIG must agree in writing to modification of the Corporate Integrity Agreement contained in Exhibit A.

21. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the Court that the parties stipulate and

request that BHCC be dismissed with prejudice from the action captioned United States ex rel. Health Outcomes Technologies v. Baptist Hospital of Cocke County, Civil Action No. 96-1552 (UNDER SEAL), in the United States District Court for the Eastern District of Pennsylvania.

22. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release BHCC, from any claim that the Relator, and/or Relator's Counsel may have under 31 U.S.C. § 3730(d) to pay Relator's or Relator's Counsel attorneys' fees, expenses and costs.

23. Conditioned on BHCC's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to Fifty-Nine Thousand Nine Hundred Forty-Seven Dollars and Fifty-Four Cents (\$59,947.54). The United States shall pay relator this amount within a reasonable time after receipt by the United States from BHCC of the Settlement Amount. It is expressly understood and agreed that the United States in no way promises or guarantees nor is liable to relator for the collection or payment of any funds pursuant to this Agreement or the payment or any relator's share payments except as provided herein for funds actually collected and received by the United States.

24. On receipt of the payment described in Paragraph 23 above, Relator will release and will be deemed to have released and forever discharged the United States, its officers, agents, and employees from any liability arising from the filing of the Complaint as against BHCC, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from BHCC, and in full satisfaction and settlement of claims under this Agreement.

25. The undersigned individuals signing this Agreement on behalf of BHCC and Relator, Health Outcomes Technologies, represent and warrant that they are authorized to execute this Agreement on behalf of those entities. The undersigned United States and State of Tennessee

signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

26. This Agreement is binding on successors, transferees and assigns.

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

28. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICADATED: 5/16/00BY: Cynthia F. Davidson
Cynthia Freeman Davidson
Assistant United States Attorney, BPR #016099
800 Market Street, Suite 211
Knoxville, TN 37902DATED: 6/16/00BY: Diana Younts
MICHAEL F. HERTZ
JOYCE R. BRANDA
DIANA YOUNTS
JAMIE ANN YAVELBERG
Civil Division
U.S. Department of JusticeDATED: 6/14/00BY: Lewis Morris
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human ServicesSTATE OF TENNESSEEDATED: 6-9-00BY: Paul G. Summers
PAUL G. SUMMERS
Attorney General and ReporterDATED: 6-9-00BY: Dennis J. Garvey
DENNIS J. GARVEY
Deputy Attorney General

BAPTIST HOSPITAL OF COCKE COUNTY

DATED: 5/19/00

BY: Wayne Buchner
WAYNE BUCHNER
Hospital Administrator

DATED: 5/24/00

BY: Stephen A. McSween
STEPHEN A. McSWEEN
Counsel for Baptist Hospital of Cocke County

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: 6/20/00

BY: Dr J H
DRINKER, BIDDLE & REATH
Attorneys for Relator
Health Outcomes Technologies