

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 Baptist Health System, Inc. (“Baptist Health”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Baptist Health is a not-for-profit Florida corporation that serves as the parent company for a network of affiliated hospitals and medical providers in northeast Florida that submit claims to federal health care programs.

B. On July 15, 2022, Baptist Health voluntarily self-disclosed to the United States that certain legacy patient discount policies potentially violated the Civil Monetary Penalty Law, 42 U.S.C. § 1320a-7a, and the federal Anti-Kickback Statute (“AKS”), 42 U.S.C. § 1320a-7b. Baptist Health voluntarily discontinued the discount policies in July 2022, conducted an internal compliance review, and provided the United States with a detailed supplemental disclosure.

C. Baptist Health has received credit under the Department of Justice’s guidelines for taking disclosure, cooperation, and remediation into account in False Claims Act cases, Justice Manual § 4-4.112.

D. The United States contends that Baptist Health and/or its subsidiaries submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”).

E. The United States contends that it has certain civil claims against Baptist Health arising from Baptist Health subsidiaries providing discounts of up to 50 percent or more on patient cost sharing obligation balances for certain categories of Medicare beneficiaries, as

determined by the health system, without regard to any financial need consideration, during the period from January 1, 2016 through August 15, 2022. The United States contends that Baptist Health thus caused the submission of false claims to Medicare for these beneficiaries, because Baptist Health subsidiaries provided these discounts in exchange for the beneficiaries' purchase or referral of services from Baptist Health subsidiaries. The conduct discussed in this paragraph is referred to below as the "Covered Conduct."

G. This Settlement Agreement is neither an admission of liability by Baptist Health, nor a concession by the United States that its claims are not well-founded. 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. Baptist Health shall pay to the United States \$1,500,000.00, plus interest accrued at the annual rate of 4.125% from February 12, 2024 (the "Settlement Amount"), of which \$1,000,000 is restitution, no later than fifteen (15) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Middle District of Florida.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Baptist Health, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate 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. In consideration of Baptist Health's voluntary submission of this matter to OIG's Self Disclosure Protocol, and Baptist Health's obligations in this Agreement, and conditioned upon the United States' receipt of full payment of the Settlement Amount plus interest due under Paragraph 1, the OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Baptist Health and the thirteen entities listed in the Appendix, under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this paragraph and in Paragraph 4 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Baptist Health and any of the thirteen entities listed in the Appendix, from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4, below.

4. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights 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 or enforcement right

- 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 of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Baptist Health waives and shall not assert any defenses Baptist Health or its subsidiaries 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.

6. Baptist Health, on behalf of itself and its subsidiaries, 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 Baptist Health (or any of its subsidiaries) has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants 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 contractor (e.g., Medicare

Administrative Contractor, fiscal intermediary, carrier), or any state payer, related to the Covered Conduct; and Baptist Health agrees, on behalf of itself and its subsidiaries, not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

8. Baptist Health 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. §§ 1395-1395III and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Baptist Health and its subsidiaries, and its or their present or former officers, directors, employees, shareholders, and agents 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) Baptist Health'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 attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Baptist Health 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 Baptist Health, and Baptist Health and its subsidiaries 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 Baptist Health or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Baptist Health 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 Baptist Health 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. Baptist Health agrees that the United States, at a minimum, shall be entitled to recoup from Baptist Health 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 Baptist Health or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Baptist Health 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 Baptist Health'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 2 above and in Paragraph 10 (waiver for beneficiaries paragraph), below.

10. Baptist Health and its subsidiaries agree that they waive 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 into this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Middle District of Florida. 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 Baptist Health'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 and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


THE UNITED STATES OF AMERICA

DATED: _____

BY: **MICHAEL
HOFFMAN**  Digitally signed by MICHAEL
HOFFMAN
Date: 2024.05.03 16:31:06 -04'00'


MICHAEL A. HOFFMAN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: **CAROLYN
TAPIE**  Digitally signed by
CAROLYN TAPIE
Date: 2024.05.06
10:17:01 -04'00'

CAROLYN B. TAPIE
Assistant United States Attorney
Middle District of Florida


DATED: _____

BY: **SUSAN
GILLIN**  Digitally signed by
SUSAN GILLIN
Date: 2024.05.02 08:56:07
-04'00'



SUSAN E. GILLIN
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

BAPTIST HEALTH

DATED: 5/3/24

BY: 
SCOTT BAITY
General Counsel
Baptist Health

DATED: 5/3/2024

BY:  
JASON MEHTA
JOSEPH SWANSON
OLIVIA BENJAMIN
Foley & Lardner LLP
Counsel for Baptist Health

APPENDIX

LIST OF ENTITIES INCLUDED IN PARAGRAPH 3 (CONCERNING OIG-HHS'S RELEASE.)

ENTITY NAME
Baptist Agewell Physicians, Inc.
Baptist Primary Care, Inc.
Southern Baptist Hospital of Florida, Inc.
Baptist Behavioral Health, LLC
Baptist ENT Specialists, Inc.
Baptist Cardiology, Inc.
Baptist Neurology, Inc.
Baptist Pulmonary Specialists, Inc.
Baptist Specialty Physicians, Inc.
Baptist Urology, Inc.
Baptist Medical Center of the Beaches, Inc.
Baptist Medical Center of Nassau, Inc.
Baptist MD Anderson Cancer Physicians, Inc.