

## 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”) and the Defense Health Agency (“DHA”), acting on behalf of the TRICARE Program (collectively, the “United States”); University of Colorado Health d/b/a UCHealth (“UCHealth”); and Relator Timothy Sanders (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Defendant UCHealth is a health care system headquartered in Aurora, Colorado. UCHealth provides health care to a wide range of patients, including care at emergency departments to beneficiaries of Federal health care programs.

B. On April 28, 2021, Relator Timothy Sanders filed a *qui tam* action in the United States District Court for the District of Colorado captioned *United States ex rel. Sanders v. University of Colorado Health, et al.*, Civil Action No. 21-cv-01164-NRN, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. The United States contends that UCHealth 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”) and the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”).

D. The United States contends that it has certain civil claims against UCHealth arising from the conduct described below. That conduct is referred to below as the “Covered Conduct.”

1. From November 1, 2017 through March 31, 2021 (the “Covered Period”), certain UCHealth hospitals (the “UCHealth Hospitals”)<sup>1</sup> submitted Evaluation & Management (“E/M”) emergency department facility claims to Medicare and TRICARE. E/M claims relate to medical visits and services that involve evaluating and managing a patient’s health and medical conditions, including qualifying visits to a hospital’s emergency departments.
2. A facility E/M claim compensates “for the hospital resources associated with clinic and emergency department visits” and so “represents the resources utilized by the hospital.” 72 Fed. Reg. 66579, 66805-06 (Nov. 27, 2007). As set forth in the regulations, a facility’s guidelines for E/M coding “should be designed to reasonably relate the intensity of hospital resources to the different levels of effort represented by the codes.” *Id.* at 66805.
3. A hospital’s E/M emergency facility claims can be billed to Medicare using five different Current Procedural Terminology (CPT) codes (CPT 99281 through CPT 99285), depending on the hospital resources associated with the visit. An E/M claim billed with CPT 99285, the code reflecting the highest level of severity and corresponding hospital resource usage, requires a comprehensive history, a comprehensive examination, and medical decision making of high complexity, and typically involves severe medical conditions or needs.
4. During the Covered Period, the UCHealth Hospitals automatically coded certain claims for emergency room visits using CPT 99285, whenever health care providers at UCHealth Hospitals checked a set of the patient’s vital signs more times than total hours that the patient was present in the emergency department, excepting patients who were in the emergency department for fewer than 60 minutes, despite the severity of the patient’s medical condition or the hospital resources necessary to manage the patient’s health and treatment. UCHealth sometimes referred to this coding rule as the “frequent monitoring of vital signs.”
5. The United States alleges that UCHealth knew that this automatic coding rule associated with “frequent monitoring of vital signs” did not satisfy the requirements of the CPT code description for CPT 99285 and did not reasonably reflect the facility resources utilized by the UCHealth Hospitals. UCHealth received numerous complaints from its coding employees warning about the use of CPT 99285 based on the automatic coding rule associated with “frequent monitoring of vital signs.” UCHealth also received and responded to individual patient complaints, but did not adjust its automatic coding rule systemically. Further, UCHealth was consistently identified, in reports received from the Centers for Medicare & Medicaid Services, as a “High Outlier” for its CPT 99285 E/M billing during the Covered Period.

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<sup>1</sup> Longs Peak Hospital, Medical Center of the Rockies, Poudre Valley Health Care Inc., UCHealth Broomfield Hospital, UCHealth Grandview Hospital, UCHealth Greeley Hospital, UCHealth Highlands Ranch Hospital, UCHealth Memorial Hospital System, University of Colorado Hospital Authority, and UCHealth Yampa Valley Medical Center.

6. The United States alleges that despite knowing that E/M claims based on its automatic coding rule associated with “frequent monitoring of vital signs” did not satisfy the description and commensurate facility resource usage requirements for CPT 99285, UCHealth submitted false claims to Medicare and TRICARE during the Covered Period and received payments for these false claims.

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

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

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. UCHealth shall pay to the United States \$23,000,000 (“Settlement Amount”), of which \$11,500,000 is restitution, and interest on the Settlement Amount at a rate of 4.0% per annum from September 12, 2024, no later than 14 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the Department of Justice.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$3,910,000 plus a proportionate share of interest to Relator by electronic funds transfer (“Relator’s Share”).

3. UCHealth agrees to pay \$99,312.00 to Relator and Relator’s counsel, no later than 14 days after the Effective Date of this Agreement, in full satisfaction of their claims for attorneys’ fees, expenses, and costs incurred in connection with the Civil Action. Payment shall be by electronic funds transfer pursuant to written instructions to be provided by Relator’s counsel.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount and interest due under Paragraph 1, the United States releases UCHealth, together with its current and former parent corporations; direct and indirect subsidiaries; affiliates; 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.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases UCHealth from any civil monetary claim Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraph 4 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, including mandatory or 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 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.

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Conditioned upon receipt of the payment referenced in Paragraph 3, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases UCHHealth, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. UCHHealth waives and shall not assert any defenses UCHHealth 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.

10. UCHealth fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that UCHealth has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

11. UCHealth fully and finally releases Relator, and his heirs, successors, attorneys, agents, and assigns, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that UCHealth has asserted, could have asserted, or may assert in the future against Relator, and his heirs, successors, attorneys, agents, and assigns, related to the Covered Conduct and Relator's investigation and prosecution thereof.

12. 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), TRICARE, or any state payer, related to the Covered Conduct; and UCHealth agrees not to resubmit to any Medicare contractor, TRICARE, 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.

13. UCHealth 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of UCHealth, 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(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) UCHealth'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 UCHealth makes to the United States pursuant to this Agreement and any payments that UCHealth may make to Relator, including costs and attorneys' fees.

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 UCHealth, and UCHealth 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 UCHealth or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: UCHealth 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 UCHealth 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. UCHealth agrees that the United States, at a minimum, shall be entitled to recoup from UCHealth 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 UCHealth or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on UCHealth 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 UCHealth's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

14. 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 15 (waiver for beneficiaries paragraph), below.

15. UCHealth 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.

16. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

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

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

19. 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 Colorado. 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.

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

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

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

23. This Agreement is binding on UCHealth's successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

26. 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: 11/12/2024

BY: \_\_\_\_\_  
DAVID GOODALL MILLER  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 11/7/2024

BY: *Lila M. Bateman*  
LILA M. BATEMAN  
Assistant United States Attorney  
United States Attorney's Office  
District of Colorado  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
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

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense

**THE UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
DAVID GOODALL MILLER  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LILA M. BATEMAN  
Assistant United States Attorney  
United States Attorney's Office  
District of Colorado  
United States Department of Justice

DATED: 11/12/24

BY: \_\_\_\_\_  
**SUSAN GILLIN** Digitally signed by SUSAN GILLIN  
Date: 2024.11.12 09:14:46 -05'00'  
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

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense

**THE UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

DAVID GOODALL MILLER  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

LILA M. BATEMAN  
Assistant United States Attorney  
United States Attorney's Office  
District of Colorado  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

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

DATED: 11/07/2024

BY: BLEY.PAUL.NICHOLAS.1099873821  
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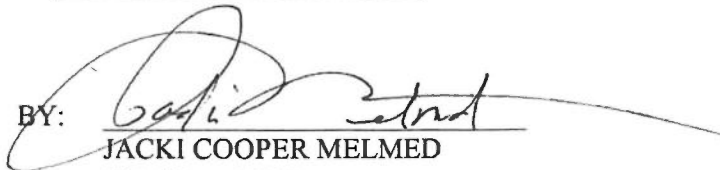
for

SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense

**UCHEALTH - DEFENDANT**

DATED: 11.7.2024

BY:

A handwritten signature in black ink, appearing to read "Jacki Cooper Melmed", written over a horizontal line.

JACKI COOPER MELMED  
Chief Legal Officer  
UCHealth

DATED: 11-7-24

BY:

A handwritten signature in blue ink, appearing to read "Matt Benedetto", written over a horizontal line.


MATTHEW D. BENEDETTO  
Counsel for UCHealth

**TIMOTHY SANDERS - RELATOR**

DATED: 11/7/24

BY:   
\_\_\_\_\_  
TIMOTHY SANDERS  
Relator

DATED: 11/8/24

BY:   
\_\_\_\_\_  
MICHAEL S. PORTER  
Counsel for Timothy Sanders