

## 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”); BayCare Health System Inc., Morton Plant Hospital Association, Inc., Trustees of Mease Hospital, Inc., and St. Anthony’s Hospital, Inc. (collectively, “BayCare”); and Larry Bomar (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. BayCare Health System, Inc. is a not-for-profit health system headquartered in Clearwater, Florida, with 15 hospitals in the Tampa Bay region, including the hospitals identified in this paragraph. Morton Plant Hospital Association, Inc. is a Florida not-for-profit corporation that operates Morton Plant Hospital in Clearwater, Florida. Trustees of Mease Hospital, Inc. is a Florida not-for-profit corporation that operates Mease Countryside Hospital in Safety Harbor, Florida and Mease Dunedin Hospital in Dunedin, Florida. St. Anthony’s Hospital, Inc. is a Florida not-for-profit corporation that operates a hospital known as St. Anthony’s Hospital in St. Petersburg, Florida. Morton Plant Hospital, Mease Countryside Hospital, Mease Dunedin Hospital, and St. Anthony’s Hospital are hereafter collectively referred to as “BayCare Hospitals.”

B. On December 2, 2016, the Relator filed a *qui tam* action in the United States District Court for the Middle District of Florida captioned *United States ex rel. Bomar v. Bayfront HMA Medical Center LLC, et al.*, Civil Action No. 8:16-cv-03310-MSS-JSS (M.D. Fla.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleges that various hospitals, including Morton Plant Hospital, Mease

Countryside Hospital, and Mease Dunedin Hospital, made impermissible cash donations to the Juvenile Welfare Board of Pinellas County (“JWB”) in order to recoup the amount of those donations plus matching federal funding under the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid Program”).

C. The United States contends that BayCare submitted or caused to be submitted claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

D. The United States contends that it has certain civil claims against BayCare for knowingly causing false claims for federal matching funds to be submitted to the United States during the period from October 1, 2013 to September 30, 2015 by making non-bona fide donations, as defined at 42 U.S.C. § 1396b(w)(2)(B), to JWB. Specifically, the United States contends that during this time, BayCare made cash donations to JWB, a portion of which JWB used to transfer to the State of Florida’s Agency for Health Care Administration for Florida’s Medicaid Program on behalf of the BayCare Hospitals. The United States contends that these amounts were “matched” by the federal government before being returned to the BayCare Hospitals as Medicaid payments, and BayCare was thus able to recoup its original donation to JWB and also receive federal matching funds, in violation of the federal prohibition on non-bona fide donations. The United States contends that BayCare’s donations were non-bona fide donations and ultimately caused the BayCare Hospitals to receive federal Medicaid funding to which they were not entitled. This conduct is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by BayCare nor a concession by the United States that its claims are not well founded. BayCare denies the allegations contained in Paragraph D.

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. BayCare shall pay to the United States \$20,000,000 (“Settlement Amount”), of which \$10,000,000 is restitution, and interest on the Settlement Amount at a rate of 1.625% per annum from January 14, 2022 until paid 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 United States 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 \$5,000,000 to Relator by electronic funds transfer (“Relator’s Share”).

3. BayCare shall pay to Relator \$25,000.00 (an amount reached by mutual agreement that does not impact or relate to Relator’s potential claims for fees and expenses against non-settling defendants) for expenses, attorneys’ fees and costs (“Relator’s Expenses”) pursuant to 31 U.S.C. § 3730(d)(2), no later than 21 days after the Effective Date of this Agreement, in accordance with written instructions to be provided to BayCare’s counsel 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, plus interest due under Paragraph 1, the United States releases BayCare, 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.

5. 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 BayCare together with their predecessors, current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; corporate affiliates; current or former corporate members; and the corporate successors and assigns of any of them, and their owners, directors, officers, agents, employees, and counsel from any action, in law or in equity, suits, debts, liens, contracts, agreements, covenants, promises, liability, obligations, claims, demands, rights of subrogation, contribution and indemnity, damages, loss, cost or expenses, direct or indirect, of any kind or nature whatsoever (including without limitation any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 and all civil monetary claims asserted in the Civil Action) known or unknown, fixed or contingent, foreign, state or federal, under common law, statute or regulation, liquidated or unliquidated, claimed or concealed, and without regard to the date of occurrence, which Relator ever had, now has, may assert, or may in the future claim to have, against BayCare by reason of any act, cause, matter, or thing whatsoever from the beginning of time to the date hereof.

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. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases BayCare, 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. BayCare waives and shall not assert any defenses BayCare 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. BayCare 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 BayCare 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. BayCare fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that BayCare has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the 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) or any state payer, related to the Covered Conduct; and BayCare agrees not to resubmit to any Medicare or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

13. BayCare 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 BayCare, 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) BayCare'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 BayCare makes to the United States pursuant to this Agreement and any payments that BayCare 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 BayCare, and BayCare 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 BayCare or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

BayCare further agrees that within 90 days of the Effective Date of this Agreement they 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 BayCare or any of their 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. BayCare agrees that the United States, at a minimum, shall be entitled to recoup from BayCare 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 BayCare or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on BayCare or any of their 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 BayCare's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

14. BayCare agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, BayCare shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. BayCare further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalf.

15. This Agreement is intended to be for the benefit of the Parties to this Agreement only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 16 (waiver for beneficiaries paragraph), below.

16. BayCare 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.

17. Within ten days of receipt of the payments described in Paragraph 1 above, Relator Bomar and BayCare shall sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of all claims against Morton Plant Hospital Association, Inc., Trustees of Mease Hospital, Inc., and St. Anthony's Hospital, Inc. pursuant to Rule 41(a)(1). At the same time, pursuant to 31 U.S.C. § 3730(b)(1), the United States will file its consent to the dismissal of the Civil Action against Morton Plant Hospital Association, Inc., Trustees of Mease Hospital, Inc., and St. Anthony's Hospital, Inc. with prejudice to the Relator, and with prejudice to the

United States as to the Covered Conduct released in this Agreement, and otherwise without prejudice to the United States.

18. Except to the extent provided for in Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. 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.

20. 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 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.

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

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

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

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

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

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

27. 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: 4/4/22

BY:

Jonathan Thrope

Jonathan Thrope  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 3/29/22

BY:

Carolyn B. Tapie

Carolyn B. Tapie  
Assistant U.S. Attorney  
Middle District of Florida

DATED: 3/29/22

BY:

Lisa M. Re /seg

Lisa M. Re  
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

**BAYCARE**

DATED: 4/1/22

BY: Tommy Inzina  
Tommy Inzina  
President and Chief Executive Officer  
BayCare Health System, Inc.,

Authorized Representative for Morton Plant Hospital  
Association, Trustees of Mease Hospital, Inc. and St.  
Anthony's Hospital, Inc.

DATED: 4/1/22

BY: Alice S. Fisher  
Alice S. Fisher  
Katherine A. Lauer  
Abid R. Qureshi  
LATHAM & WATKINS LLP

Counsel for BayCare

**RELATOR**

DATED: 3/28/2022

BY: Larry Bomar  
Larry Bomar

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

BY: \_\_\_\_\_  
Stephen S. Stallings  
The Law Offices of Stephen S. Stallings  
Counsel for Larry Bomar

**RELATOR**

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

BY: \_\_\_\_\_  
Larry Bomar

DATED: 3-28-22

BY: *Stephen Stallings*  
Stephen S. Stallings  
The Law Offices of Stephen S. Stallings  
Counsel for Larry Bomar