

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between 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 Weirton Medical Center, Inc. d/b/a Weirton Medical Center (“Weirton Medical Center”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Weirton Medical Center is a corporation organized and existing under the laws of the State of West Virginia. Weirton Medical Center’s corporate headquarters and principal place of business is located at 601 Colliers Way, Weirton, West Virginia.

B. The United States contends that Weirton Medical Center 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”).

C. In May 2019, Weirton Medical Center made a voluntary self-disclosure to the Office of the United States Attorney for the Northern District of West Virginia that it had commenced an internal investigation into any possible violations of the physician self-referral law, 42 U.S.C. § 1395nn, and would report the findings of its investigation. Following the self-disclosure, Weirton Medical Center retained third-party consultants to conduct an internal investigation focused on its financial relationships with its referring physicians. Through its internal investigation, Weirton Medical Center identified certain financial arrangements with physicians that potentially violated the Stark Law, such as those described below in paragraph D, and Weirton Medical Center reported its findings to the United States.

D. The United States contends that it has certain civil claims against Weirton Medical Center arising from its violations of the False Claims Act, 31 U.S.C. §§ 3729-3733, by knowingly submitting or causing the submission of claims to Medicare in violation of the physician self-referral law, 42 U.S.C. § 1395nn (commonly referred to as the “Stark Law”). The United States alleges that during the period from March 1, 2012 to May 30, 2019, Weirton Medical Center violated the Stark Law by submitting claims to Medicare for designated health services referred by its employed physicians with whom Weirton Medical Center had financial relationships that did not satisfy the requirements of any applicable exception to the Stark Law because the compensation paid to the physicians exceeded fair market value and/or took into account the volume or value of the physicians’ referrals of designated health services to Weirton Medical Center. That conduct is referred to below as the “Covered Conduct.”

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

F. Weirton Medical Center denies the United States’ allegations in Paragraph D.

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. Weirton Medical Center shall pay to the United States \$1,500,000.00 (“Settlement Amount”), which constitutes restitution to the United States, no later than 7 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 Northern District of West Virginia.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims), Paragraph 5 (concerning disclosure of assets), Paragraph 13 (concerning default), and Paragraph 14 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, the United States releases Weirton Medical Center 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; the civil monetary provisions of the Stark Law at 42 U.S.C. §§ 1395nn(g)(3) and (g)(4); or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. In consideration of the obligations of Weirton Medical Center in this Agreement, and upon the United States' receipt of full payment of the Settlement Amount, OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative actions seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. §1320a-7b(f)) against Weirton Medical Center 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. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Weirton Medical Center 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 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, 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;
- f. Any liability of individuals.

5. Weirton Medical Center has provided sworn financial disclosures and supporting disclosures (together "Financial Disclosures") to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. Weirton Medical Center warrants that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of asset(s) in which Weirton Medical Center had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy Weirton Medical Center's obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by Weirton Medical Center on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the

estimated net worth set forth in the Financial Disclosures by \$150,000.00 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Weirton Medical Center's previously undisclosed assets. Weirton Medical Center agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph rescinds this Agreement, Weirton Medical Center waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Weirton Medical Center that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on July 1, 2019.

6. Weirton Medical Center waives and shall not assert any defenses it 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.

7. Weirton Medical Center 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 Weirton Medical Center 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.

8. 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 Weirton Medical Center agrees 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.

9. Weirton Medical Center 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 Weirton Medical Center; 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) Weirton Medical Center'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 Weirton Medical Center makes to the United States pursuant to this Agreement, and;

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 Weirton Medical Center, and Weirton Medical Center 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 Weirton Medical Center or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Weirton Medical Center 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 Weirton Medical Center 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. Weirton Medical Center agrees

that the United States, at a minimum, shall be entitled to recoup from Weirton Medical Center 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 Weirton Medical Center or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Weirton Medical Center 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 Weirton Medical Center's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

10. Weirton Medical Center agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Weirton Medical Center shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its 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. Weirton Medical Center 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 its possession, custody,

or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

11. 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 12 (waiver for beneficiaries paragraph), below.

12. Weirton Medical Center 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 payers based upon the claims defined as Covered Conduct.

13. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to Weirton Medical Center's financial condition as reflected in the Financial Disclosures referenced in Paragraph 5.

a. In the event that Weirton Medical Center fails to pay the Settlement Amount as provided in Paragraph 1 above, Weirton Medical Center shall be in Default of its payment obligations ("Default"). The United States will provide a written Notice of Default, and Weirton Medical Center shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due. Notice of Default will be delivered to Weirton Medical Center, or to such other representatives as Weirton Medical Center shall designate in advance in writing. If Weirton Medical Center fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable,

and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Weirton Medical Center agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and bring any civil and/or administrative claim, action, or proceeding against Weirton Medical Center for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3 above, with any recovery reduced by the amount of any payments previously made by Weirton Medical Center to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to Weirton Medical Center and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Weirton Medical Center agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, Weirton Medical Center waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against Weirton Medical Center within 120 days of written notification that this Agreement has

been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on July 1, 2019. Weirton Medical Center agrees not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. In the event of Uncured Default, OIG-HHS may exclude Weirton Medical Center from participating in all Federal health care programs until Weirton Medical Center pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Weirton Medical Center. Weirton Medical Center waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court.

Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Weirton Medical Center wishes to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Weirton Medical Center will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

14. In exchange for valuable consideration provided in this Agreement, Weirton Medical Center acknowledges the following:

a. Weirton Medical Center has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Weirton Medical Center, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Weirton Medical Center was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If Weirton Medical Center's obligations under this Agreement are avoided for any reason (including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Weirton Medical Center or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Weirton Medical Center's debts, or to adjudicate Weirton Medical Center as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Weirton Medical Center or for all or any substantial part of Weirton Medical Center's assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Weirton Medical Center for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3 above; and

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Weirton Medical Center in the amount of \$149,158,194.66 less any payments received pursuant to this agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Weirton Medical Center, a receiver, trustee, custodian, or other similar official for Weirton Medical Center.

f. Weirton Medical Center agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 14.e is not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States’ police and regulatory power. Weirton Medical Center shall not argue or otherwise contend that the United States’ claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Weirton Medical Center waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Weirton Medical Center that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on July 1, 2019.

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

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

17. 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 Northern District of West Virginia. 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.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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

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

21. This Agreement is binding on Weirton Medical Center's successors, transferees, heirs, and assigns.

22. All Parties consent to the United States' and Weirton Medical Center's disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of the 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.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

THE UNITED STATES OF AMERICA

DATED: 06/30/2022

BY: 
WILLIAM IHLENFELD
United States Attorney
U.S. Attorney's Office
Northern District of West Virginia

DATED: 07/06/2022

BY: 
DIANA K. CIESLAK
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice

DATED: _____

BY: _____
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
WILLIAM IHLENFELD
United States Attorney
U.S. Attorney's Office
Northern District of West Virginia

DATED: _____

BY: _____
DIANA K. CIESLAK
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice

DATED: 7/5/2022

BY: Lisa M. Re / Rmf
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

WEIRTON MEDICAL CENTER, INC. D/B/A WEIRTON MEDICAL CENTER

DATED: 6-29-22

BY:



JOHN FRANKOVITCH
President and Chief Executive Officer
Weirton Medical Center

DATED: 6/29/22

BY:



R. BOOTH GOODWIN II
LUCAS R. WHITE
Goodwin & Goodwin, LLP
Attorneys for Weirton Medical Center

DATED: 6/29/22

BY:



CARL A. FRANKOVITCH
Frankovitch, Anetakis, Simon,
Decapio & Pearl, LLP
Attorney for Weirton Medical Center