

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement ("Agreement") is made between the United States of America, acting through the Department of Justice (the "Department of Justice"), and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"); the TRICARE Management Activity ("TMA") (formerly the Office of the Civilian Health and Medical Program of the Uniformed Services ("OCHAMPUS")), through its General Counsel; the United States Office of Personnel Management ("OPM"), which administers the Federal Employees Health Benefits Program ("FEHBP") (collectively, the "United States"); the Personal Representative of the Estate of Relator Theresa Semtner ("Relator"); and Beaumont Professional Services, a division of William Beaumont Hospital (collectively, "Beaumont"); (collectively in all, the "Parties"), through their authorized representatives.

### II. PREAMBLE

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

A. The United States contends that Beaumont 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. §§ 1395-1395ggg (1997), the TRICARE Program, 10 U.S.C. §§ 1071-1106; the FEHBP, 5 U.S.C. §§ 8901-8914, and the Medicaid Program, 42 U.S.C. §§ 1396-1396v (1997).

B. This Agreement addresses the United States' civil claims against Beaumont based on the conduct alleged in the sealed action pending in the Western District of Oklahoma (the "Sealed Action"), and in Paragraphs C and D of this Agreement, involving the coding by

Emergency Physicians Billing Service ("EPBS") of emergency room services on behalf of Beaumont through December 31, 1998 (the "Covered Conduct").

C. The United States contends that the Covered Conduct may have resulted in the submission of claims that are actionable under the False Claims Act, 31 U.S.C. §§ 3729-3733, and common law.

D. The United States also contends that it may have certain administrative claims against Beaumont under the provisions for permissive exclusion from the Medicare, Medicaid and other Federal health care programs, 42 U.S.C. § 1320a-7(b), the provisions for exclusion from the TRICARE program, 32 C.F.R. § 199.9, the provisions for exclusion from the FEHBP, 5 U.S.C. § 8902a or 5 C.F.R. Part 970, and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

E. Beaumont fully denies the contentions of the United States in paragraphs C and D above.

F. The Parties mutually desire to settle these disputes.

### III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and 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. Payment Terms. Beaumont agrees to pay the United States and the state of Michigan (the "State") the collective sum of \$289,000.00 (the "Total Amount"). Beaumont agrees to make separate payments aggregating up to the Total Amount as follows: \$275,189.45 to the United States (the "United States' Settlement Share") and \$13,810.55 to the State (the

"State's Settlement Share"). Payment of the United States' Settlement Share will be made within ten business days of execution of the Agreement. Payment of the United States' Settlement Share shall be governed by this Agreement and payments will be made by electronic funds transfer in accordance with instructions to be provided by the United States. A separate settlement agreement will be negotiated and executed between Beaumont and the State (the "State Agreement"), with payment instructions as to the State's Settlement Share to be provided on behalf of the State. The Total Amount shall include Relator's Share, as defined herein, as well as any and all amounts payable to Relator's counsel.

Beaumont acknowledges that all claims that TMA may have suspended have been fully processed, and waives and releases any appeal, dispute, or challenge it may have had with respect to any previously suspended claims.

2. Compliance Certifications. Beaumont will take the following actions in each of the three years following the execution of this Agreement:

a. Beaumont agrees that for a three year period following the execution of this agreement, it will maintain its current compliance measures, effective upon the final signature of this Agreement. Additionally, Beaumont will provide all new and existing employees with a written summary of its compliance measures as well as the contact information for Beaumont's Compliance contact.

b. Beaumont agrees that it will provide one hour of annual training to all employees and independent contractors who engage in the provision of health care items or services on Beaumont's commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims. In addition,

Beaumont agrees to provide at least two hours annually of training to all employees or agents (i) involved in coding or billing on the proper documentation for coding DRGs; and (ii) the consequences of false or improper coding and submissions to Federal health care programs.

c. Beaumont agrees that it will perform periodic audits (at least semi-annually) on Current Procedural Terminology ("CPT") codes with attached "52 modifiers" to assess whether these codes have the proper documentation for the code level at which they are billed to the Federal health care programs.

d. Beaumont agrees that it will make reasonable efforts to identify any overpayments involving Federal health care program payments, and will repay any overpayments to the appropriate payor within 60 days of identification. Such repayment shall be made in accordance with the policies of the payor.

e. Beaumont will provide an annual certification to the OIG for each of the three years following execution of this Agreement regarding the specifications in Subparagraphs a - d. The certification will be due annually on the effective date (month & consecutive year) of this Agreement.

3. Dismissal and Release. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations set forth in this Agreement and conditioned upon Beaumont's payment in full of the United States' Settlement Share: (i) within five days after the Relator's receipt of the payment set forth in Paragraph 6 hereof (but no more than 90 days from the date of Beaumont's payment to the United States of the United States' Settlement Share), the United States and Relator will move to dismiss with prejudice the claims against Beaumont in the Sealed Action subject to the terms of this Agreement and as described more fully in Paragraph 9 of this

Agreement; and (ii) the United States hereby releases and discharges Beaumont from any and all civil or administrative monetary claims the United States now 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.

4. Administrative Waiver. (a) Subject to the exceptions in Paragraph 8 below and as reserved in this Subparagraph, in consideration for the obligations of Beaumont under this Agreement conditioned upon Beaumont's payment in full of the United States' Settlement Share and the State's Settlement Share, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking permissive exclusion of Beaumont from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)), pursuant to 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Beaumont from the Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) for the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 8, below.

(b) In consideration of the obligations of Beaumont under this Agreement, conditioned upon Beaumont's payment in full of the United States' Settlement Share, the TMA agrees to refrain from instituting, directing, or maintaining any administrative claims or any action seeking exclusion from the TRICARE Program against Beaumont under 32 C.F.R. § 199.9

for the Covered Conduct, except as reserved in Paragraph 8 below and as reserved in this Subparagraph. The TMA expressly reserves authority to exclude Beaumont from the TRICARE program under 32 C.F.R. §§ 199.9(f)(1)(i)(A) and (f)(1)(iii) (mandatory exclusion), based upon the Covered Conduct. Nothing in this Paragraph precludes the TMA from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 8, below.

(c) In consideration of the obligations of Beaumont set forth in this Agreement, conditioned upon Beaumont's payment in full of the United States' Settlement Share, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the FEHBP against Beaumont under 5 U.S.C. § 8902a or 5 C.F.R. Part 970 for the Covered Conduct, except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing in this Subparagraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 8, below.

5. Fairness of Settlement. Relator agrees that the settlement between the United States and Beaumont in this action is fair, adequate and reasonable pursuant to 31 U.S.C. § 3730(c)(2)(B).

6. Relator's Share. Pursuant to 31 U.S.C. § 3730, the United States will pay to Relator a 20% share (the "Relator's share"), within a reasonable time after the United States' receipt of the United States' Settlement Share from Beaumont. Relator will provide the United States with wire transfer information to allow the Relator's share to be paid by wire transfer. The United States shall not be obligated to pay Relator unless and until the United States receives

payment of the United States' Settlement Share from Beaumont.

7. Release and Discharge of United States. In exchange for the United States' payment to Relator of the Relator's share, Relator hereby releases and discharges any and all claims Relator might bring against the United States relating to the Covered Conduct, and this Agreement, under 31 U.S.C. § 3730(d).

8. Exceptions to the Releases. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement and the releases provided herein are:

- a. any civil, criminal, or administrative claims arising under Title 26, United States Code (Internal Revenue Code), or under securities laws;
- b. claims for defective or deficient services;
- c. claims relating to obligations created by this Agreement;
- d. claims against entities or persons other than Beaumont, including those currently named as defendants in the Sealed Action, and any named defendants in *United States ex rel. Semtner v. EPBS*, No. 94-671-(C) (W.D. Okla.), and other clients of EPBS;
- e. except as explicitly stated in this Agreement, any other administrative liability, including claims for any action seeking exclusion from the Medicare program or other Federal health care programs (as defined in Title 42 U.S.C. §1320a-7b(f)) pursuant to 42 U.S.C. § 1320a-7(a) (mandatory exclusion);
- f. any liability to the United States or its agencies for any conduct other than the Covered Conduct; and
- g. any criminal liability.

9. Stipulation of Dismissal. Concurrent with the execution of this Settlement Agreement, the United States and Relator shall execute a Stipulation of Dismissal to be filed with the Court within five days after Relator's receipt of the Relator's share described in Paragraph 6 of this Agreement (which shall be no more than 90 days from the date of Beaumont's payment to the United States of the United States' Settlement Share). The Stipulation will request that the Court enter an order to dismiss with prejudice the claims against Beaumont in the Sealed Action, subject to the terms of this Agreement and to any order by the Court with respect to the seal. The Parties will exert all best efforts to obtain the dismissal with prejudice of the claims against Beaumont consistent with this Agreement.

10. Release and Discharge of Beaumont. In consideration of the mutual promises and obligations of this Agreement, Relator hereby releases and discharges Beaumont from any claims, known or unknown, which Relator asserts or could have asserted under the False Claims Act or any other statute or common law theory of any kind whatsoever creating causes of action for the Covered Conduct.

11. Unallowable Costs. Beaumont 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 Beaumont in connection with: (a) the matters covered by this Agreement and the agreement with the State, including attorney's fees; (b) the government's audits and civil and criminal investigations of the allegations which are the subject of this Agreement; (c) any of Beaumont's investigation, defense and corrective actions undertaken in response to the Government's audits and civil and criminal investigations in

connection with matters specifically covered by this Agreement and the agreement with the State; (d) the negotiation of this Agreement and the State Agreement (including attorney's fees); and (e) the payments made to the United States, the State and the Relator pursuant to this Agreement and the State Agreement, shall be Unallowable Costs on Government contracts and under the Medicare, Medicaid, TRICARE, Veterans Affairs (VA) and FEHBP Programs (hereinafter "Unallowable Costs"). These Unallowable Costs will be separately estimated and accounted for by Beaumont and Beaumont 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 Beaumont or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

Beaumont further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare, VA, and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph 11) 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 Beaumont 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. Beaumont agrees that the United States will be entitled to recoup from Beaumont 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 overpayments 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 Beaumont or any of its subsidiaries on the effect of inclusion of Unallowable Costs (as defined in this Paragraph 11) on Beaumont 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.

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

13. Waiver of Double Jeopardy Defense. With respect to the Covered Conduct, Beaumont hereby waives and will not assert any defenses it may have to any criminal prosecution, which defenses 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 Settlement bars a remedy sought in such criminal prosecution or administrative action. Beaumont further agrees that this Settlement is not punitive in purpose or effect.

14. Internal Revenue Code. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the amounts paid hereunder for purposes of the Internal Revenue Code, Title 26 of the United States

Code.

15. Voluntary Agreement. Beaumont represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

16. Public Disclosure. Relator consents to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

17. Venue for Enforcement, Interpretation or Dispute Resolution. Should any action to enforce or interpret this Agreement, or to resolve any dispute hereunder be required, the Parties acknowledge the jurisdiction of the federal courts and agree that venue for any such action shall be in the United States District Court for the Western District of Oklahoma.

18. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, and may not be modified except by a writing signed by all Parties hereto.

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

20. Binding Nature of Agreement. This Agreement is binding on all successors, heirs, assigns and transferees of the Parties.

21. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement.

UNITED STATES OF AMERICA

Rebecca Rohr Dated: 4/18/02

REBECCA ROHR  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

\_\_\_\_\_ Dated: \_\_\_\_\_

LEWIS MORRIS  
Assistant Inspector General,  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

\_\_\_\_\_ Dated: \_\_\_\_\_

LAUREL C. GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of Defense

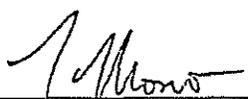
\_\_\_\_\_ Dated: \_\_\_\_\_

E. JEREMY HUTTON  
Assistant Inspector General for Legal Affairs  
Office of the Inspector General  
United States Office of Personnel Management

UNITED STATES OF AMERICA

\_\_\_\_\_ Dated: \_\_\_\_\_

REBECCA ROHR  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

 \_\_\_\_\_ Dated: 4/11/02

LEWIS MORRIS  
Assistant Inspector General,  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

\_\_\_\_\_ Dated: \_\_\_\_\_

LAUREL C. GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of Defense

\_\_\_\_\_ Dated: \_\_\_\_\_

E. JEREMY HUTTON  
Assistant Inspector General for Legal Affairs  
Office of the Inspector General  
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UNITED STATES OF AMERICA

\_\_\_\_\_ Dated: \_\_\_\_\_

REBECCA ROHR  
Trial Attorney  
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United States Department of Justice

\_\_\_\_\_ Dated: \_\_\_\_\_

LEWIS MORRIS  
Assistant Inspector General,  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

*Laurel* \_\_\_\_\_ Dated: 4-12-2002

*ACTUARY FOR*

LAUREL C. GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of Defense

\_\_\_\_\_ Dated: \_\_\_\_\_

E. JEREMY HUTTON  
Assistant Inspector General for Legal Affairs  
Office of the Inspector General  
United States Office of Personnel Management

UNITED STATES OF AMERICA

\_\_\_\_\_ Dated: \_\_\_\_\_  
 REBECCA ROHR  
 Trial Attorney  
 Commercial Litigation Branch  
 Civil Division  
 United States Department of Justice

\_\_\_\_\_ Dated: \_\_\_\_\_  
 LEWIS MORRIS  
 Assistant Inspector General,  
 Office of Counsel to the Inspector General  
 Office of Inspector General  
 United States Department of  
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\_\_\_\_\_ Dated: \_\_\_\_\_  
 LAUREL C. GILLESPIE  
 Deputy General Counsel  
 TRICARE Management Activity  
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*E. Jeremy Hutton* Dated: 4/15/02  
 E. JEREMY HUTTON  
 Assistant Inspector General for Legal Affairs  
 Office of the Inspector General  
 United States Office of Personnel Management  
*by Timothy C. Waters*

Abby L. Block

Dated: 4-16-02

ABBY L. BLOCK

Assistant Director for Insurance Programs  
United States Office of Personnel Management

*by Name [Signature]*

RELATOR

\_\_\_\_\_  
Dated: \_\_\_\_\_

CHERYL A. VAUGHT

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Attorneys for Relator

BEAUMONT

\_\_\_\_\_  
Dated: \_\_\_\_\_

THOMAS R. MCASKIN, ESQ.

Vice President and Chief Legal Officer

Dated: \_\_\_\_\_

\_\_\_\_\_  
ABBY L. BLOCK  
Assistant Director for Insurance Programs  
United States Office of Personnel Management

RELATOR

*Cheryl A. Vaught* Dated: 4/15/02  
\_\_\_\_\_  
CHERYL A. VAUGHT  
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BEAUMONT

Dated: \_\_\_\_\_

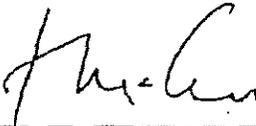
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THOMAS R. MCASKIN, ESQ.  
Vice President and Chief Legal Officer

\_\_\_\_\_ Dated: \_\_\_\_\_  
ABBY L. BLOCK  
Assistant Director for Insurance Programs  
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RELATOR

\_\_\_\_\_ Dated: \_\_\_\_\_  
CHERYL A. VAUGHT  
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Attorneys for Relator

BEAUMONT

  
\_\_\_\_\_ Dated: 4/12/02  
THOMAS R. MCASKIN, ESQ.  
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