

SETTLEMENT AGREEMENT

I. PARTIES

1. 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"); Health Outcomes Technologies (the "Relator"); and Brownsville General Hospital; (hereafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

2. Brownsville General Hospital is a hospital located in Brownsville, Pennsylvania, that provides inpatient treatment to Medicare beneficiaries.

3. The United States contends that Brownsville General Hospital 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.

4. Medicare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by the hospital.

5. The Medicare program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹

6. The United States conducted an investigation into inpatient payment claims submitted to Medicare by hospitals with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria").

7. The United States contends that it has certain civil claims against Brownsville General Hospital under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines for engaging in the following alleged conduct: during the period from October 1, 1992 to September 30, 1996, Brownsville General Hospital submitted or caused to be submitted claims with the 482.89 principal diagnosis code which were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, Brownsville General Hospital received payments to which it was not entitled.

8. The United States also contends that it has certain administrative claims against Brownsville General Hospital under the provisions for permissive exclusion from the Medicare, Medicaid and other Federal health care programs, 42 U.S.C. §

¹ International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM").

1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

9. Brownsville General Hospital has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for which claims were submitted to Medicare with the principal diagnosis code of 482.89, and Brownsville General Hospital represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

10. Brownsville General Hospital does not admit the contentions of the United States as set forth in Paragraphs 7 and 8 above.

11. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, 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:

12. Brownsville General Hospital agrees to pay to the United States \$225,000.00 (the "Settlement Amount"), as follows: Brownsville General Hospital agrees to make payment of the Settlement Amount by electronic funds transfer to the "United

States Department of Justice" as arranged through the Financial Litigation Unit, United States Attorney's Office, Western District of Pennsylvania. It is agreed that payment of the entire Settlement Amount, and any applicable interest thereon, will be made within five years of the effective date of this Settlement Agreement. Brownsville General Hospital will make annual payments of not less than \$45,000.00. The first payment of \$45,000.00 will be due on July 1, 2002. Subsequent annual payments will be due on the anniversary date of this Agreement. Any balance of the Settlement Amount which remains unpaid on the day after the third anniversary of the Settlement Agreement will be subject to interest at the Department of Treasury Current Value of Funds Rate that is in effect at that time. Any outstanding balance may be paid in full at any time within the five year period without additional penalty.

13. Brownsville General Hospital agrees to cooperate fully and in good faith with the United States in the civil or criminal prosecution of any person concerning the Covered Conduct, and concerning similar matters involving other hospitals and others, by providing accurate, truthful, and complete information whenever, wherever, to whomever and in whatever form the United States reasonably may request. Upon reasonable notice, Brownsville General Hospital will make reasonable efforts to

facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct.

14. Brownsville General Hospital has entered into a Corporate Integrity Agreement with OIG-HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Brownsville General Hospital will implement its obligations under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

15. Brownsville General Hospital releases the United States, HHS, and each of their agencies, officers, agents, employees, and contractors and their employees, and Relator from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct, including the investigation of the Covered Conduct and this Agreement.

16. Subject to the exceptions in Paragraph 18 below, in consideration of the obligations of Brownsville General Hospital set forth in this Agreement, conditioned upon Brownsville General Hospital's payment in full of the Settlement Amount, and subject to Paragraph 27 below (concerning bankruptcy proceedings

commenced within 91 days of any payment under this Agreement), the United States (on behalf of itself, its officers, agents, agencies and departments referenced above in Paragraph 15), and Relator agree to release Brownsville General Hospital and its predecessors, successors, assigns, and affiliates from any civil or administrative monetary claim the United States 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. The United States expressly reserves any claims against any entities and individuals other than Brownsville General Hospital.

17. In consideration of the obligations of Brownsville General Hospital set forth in this Agreement, conditioned upon Brownsville General Hospital's payment in full of the Settlement Amount, and subject to the Corporate Integrity Agreement, attached as Exhibit A, and Paragraph 27 below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Brownsville General Hospital under 42 U.S.C.

§ 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 18 below, and as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Brownsville General Hospital or others from Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion). 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 18, below.

18. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Brownsville General Hospital) are any and all of the following:

- (a) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (b) Any criminal liability;
- (c) Except as explicitly otherwise stated in this Agreement, any administrative liability, 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 claims based upon such obligations as are created by this Agreement;

(f) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Brownsville General Hospital;

(g) Any claims based on a failure to deliver items or services billed; and

(h) Any claims against any individuals, including officers and employees of Brownsville General Hospital.

19. Brownsville General Hospital has provided sworn financial disclosure statements ("Financial Statements") to the United States, and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Brownsville General Hospital warrants that the Financial Statements are thorough, accurate, and complete. Brownsville General Hospital further warrants that it does not own or have an interest in any assets which have not been disclosed in the Financial Statements, and that Brownsville General Hospital has made no misrepresentations on, or in connection with, the Financial Statements. In the event the United States learns of asset(s) in which Brownsville General Hospital had an interest at the time of this Agreement which were not disclosed in the Financial Statements, or in the event the United States learns of a misrepresentation by Brownsville General Hospital on, or in connection with, the

Financial Statements, and in the event such nondisclosure or misrepresentation changes the estimated net worth of Brownsville General Hospital set forth on the Financial Statements by Two Hundred and Fifty Thousand dollars (\$250,000.00) or more, the United States may at its option: (1) rescind this Agreement and reinstate its suit upon the underlying claims described in paragraph 7; or (2) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Brownsville General Hospital previously undisclosed. Brownsville General Hospital agrees not to contest any collection action undertaken by the United States pursuant to this provision.

20. In the event that the United States, pursuant to paragraph 19, above, opts to rescind this Agreement, Brownsville General Hospital expressly 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 which (1) are filed by the United States within 60 calendar days of written notification to Brownsville General Hospital that this Agreement has been rescinded, and (2) relate to the Covered Conduct, except to the extent these defenses were available on February 27, 1996.

21. Brownsville General Hospital waives and will not assert any defenses it may have to any criminal prosecution or

administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy 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. Brownsville General Hospital agrees that this settlement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

22. The Settlement Amount that Brownsville General Hospital must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 12 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary related to the Covered Conduct; and Brownsville General Hospital agrees not to resubmit to any Medicare carrier or intermediary, any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

23. Brownsville General Hospital agrees that:

(a) Unallowable Costs Defined: 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. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Brownsville General Hospital, 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) Brownsville General Hospital'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 attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Brownsville General Hospital makes to the United States pursuant to this Agreement; and
- (6) the negotiation of, and obligations undertaken pursuant to the Corporate Integrity Agreement to:
 - (i) Retain an independent review organization to perform annual reviews as described in Section III of the Corporate Integrity Agreement; and
 - (ii) prepare and submit reports to the OIG-HHS,

are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA), and Federal Employees Health Benefits Program (FEHBP). (All costs described or set forth in this paragraph 23(a) are hereafter, "unallowable costs").

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for by Brownsville General Hospital, and Brownsville General Hospital 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 Brownsville General Hospital or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Brownsville General Hospital further agrees that within 90 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA 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 Brownsville General Hospital or any of its subsidiaries or affiliates, 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. Brownsville General Hospital agrees that the United States, at a minimum, will be entitled to recoup from Brownsville General Hospital 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 Brownsville General Hospital or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Brownsville General Hospital 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.

24. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

25. Brownsville General Hospital agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Brownsville General Hospital waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

26. Brownsville General Hospital expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Brownsville General Hospital, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

27. In the event Brownsville General Hospital commences, or a thirty party commences, within 91 days of any payment under this Agreement, any case, proceeding, or other action (a) under

any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Brownsville General Hospital's debts, or seeking to adjudicate Brownsville General Hospital as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Brownsville General Hospital or for all or any substantial part of Brownsville General Hospital's assets, Brownsville General Hospital agrees as follows:

a. Brownsville General Hospital's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Brownsville General Hospital will not argue or otherwise take the position in any such case, proceeding or action that: (i) Brownsville General Hospital's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Brownsville General Hospital was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Brownsville General Hospital.

b. In the event that Brownsville General Hospital's obligations hereunder are avoided pursuant to 11 U.S.C. § 547, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative

claim, action or proceeding against Brownsville General Hospital for the claims that would otherwise be covered by the releases provided in Paragraphs 16-17 above. If the United States chooses to do so, Brownsville General Hospital agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Brownsville General Hospital from participation in Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that Brownsville General Hospital will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that Brownsville General Hospital will 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 claims, actions or proceeding which are brought by the United States within 180 calendar days of written notification to Brownsville General Hospital that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on February 27, 1996; and (iii) the United States has a valid claim against Brownsville General Hospital in the amount of \$574,823.43 plus applicable

penalties as authorized under the False Claims Act which were submitted during the period of October 1, 1992 through September 30, 1996 plus interest. The United States may pursue its claim, *inter alia*, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Brownsville General Hospital acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

28. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

29. Brownsville General Hospital represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

30. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Western District of Pennsylvania, except that disputes arising under the Corporate Integrity Agreement (attached as Exhibit A) shall be resolved exclusively under the dispute resolution provisions set forth in the Corporate Integrity Agreement.

31. This Agreement, including Exhibit A which is incorporated by reference, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Brownsville General Hospital and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement attached as Exhibit A, as provided in the Corporate Integrity Agreement.

32. After this Agreement is executed, the United States and Relator will notify the Court that the Parties stipulate and request that Brownsville General Hospital be dismissed with prejudice from *United States of America, ex rel. Health Outcomes Technologies v. Brownsville General Hospital, et al.*, Civil Action No. 01-1395 (UNDER SEAL), in the United States District Court for the Western District of Pennsylvania, subject to the provisions of this Settlement Agreement, which will be incorporated in that dismissal.

33. By this Agreement, Relator and Relator's Counsel will release and will be deemed to release Brownsville General Hospital from any claim that the Relator, and/or Relator's Counsel may have under 31 U.S.C. § 3730(d) to pay Relator's or Relator's Counsel attorneys' fees, expenses and costs.

34. Conditioned on Brownsville General Hospital's payment in full of the Settlement Amount, as described in paragraph 12, Relator shall receive from the United States payments amounting

to \$31,500.00. The United States shall pay Relator the proportionate share amount within a reasonable time after receipt by the United States from Brownsville General Hospital of the installment payments of the Settlement Amount as set forth in paragraph 12. Payment of Relator's share will not be made with interest. It is expressly understood and agreed that the United States in no way promises or guarantees nor is liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment or any Relator's share payments except as provided herein for funds actually collected and received by the United States.

35. On receipt of the payment described in Paragraph 34 above, Relator will release and will be deemed to have released and forever discharged the United States, its officers, agents, and employees from any liability arising from the filing of the Complaint as against Brownsville General Hospital, including any claim pursuant to 31 U.S.C. § 3730(c)(5) or (d) to a share of any settlement proceeds received from Brownsville General Hospital, and in full satisfaction and settlement of claims under this Agreement.

36. The undersigned individuals signing this Agreement on behalf of Brownsville General Hospital and Relator, Health Outcomes Technologies, represent and warrant that they are authorized to execute this Agreement on behalf of those entities.

The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

38. This Agreement is effective on the date of signature of the last signatory to the Agreement.

39. This Agreement is binding on all successors, assigns, transferees and heirs of Brownsville General Hospital.

FOR THE UNITED STATES OF AMERICA, U.S. DEPARTMENT OF JUSTICE:

DATED: May 25, 2002

BY: Mary Beth Buchanan
MARY BETH BUCHANAN
United States Attorney for the
Western District of Pennsylvania

DATED: May 23, 2002

BY: Amy Reynolds Hay
AMY REYNOLDS HAY
Chief, Civil Division
Office of the United States
Attorney for the Western
District of Pennsylvania

DATED: May 23, 2002

BY: Philip P. O'Connor, Jr.
PHILIP P. O'CONNOR, JR.
Assistant U.S. Attorney
Office of the United States
Attorney for the Western
District of Pennsylvania

On Behalf of the United States Department of
Health and Human Services:

DATED: _____

5/17/02

BY: _____



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

FOR BROWNSVILLE GENERAL HOSPITAL:

DATED: May 14, 2002

BY: Sara Poling
SARA POLING
Chief Executive Officer
Brownsville General Hospital

ATTORNEY FOR BROWNSVILLE GENERAL HOSPITAL:

DATED: 5-20-02

BY: Henry Casale
HENRY CASALE, ESQUIRE
HORTY, SPRINGER & MATTERN
Attorney for
Brownsville General Hospital

FOR RELATOR, HEALTH OUTCOMES TECHNOLOGIES

DATED: May 22, 2002

BY: MJH / mlc
RELATOR
HEALTH OUTCOMES TECHNOLOGIES

DATED: May 22, 2002

BY: MJH / mlc
MICHAEL J. HOLSTON, ESQ.
Drinker, Biddle & Reath
Counsel for Relator
Health Outcomes Technologies