

SETTLEMENT AGREEMENTI. PARTIES

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"); the Relator and its counsel ("Relator"), and Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital (hereafter collectively referred to as "Hospital"), through their authorized representatives. All the parties to this Agreement may be collectively referred to as "the Parties" in this Agreement.

II. PREAMBLE

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

A. The hospital is an independent corporation licensed under the State of Missouri named Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital. Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital operates an acute care hospital located in Columbia, Missouri.

B. Hospital is a health care provider, and 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. §§ 1395-1395ddd (1997) and the Medicaid Program ("Medicaid"), 42 U.S.C. §§ 1396-1396v (1997), for the inpatient treatment of Medicare and Medicaid beneficiaries.

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

D. The Medicare and Medicaid programs rely upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹

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

F. The United States contends that it has certain civil claims against Hospital under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in paragraph III(D) below, for engaging in the following alleged conduct during the period from January 1, 1993, to December 31, 1996: Hospital submitted or caused to be submitted claims for inpatient hospital services provided at Columbia Regional Hospital with the 482.89 principal diagnosis code to Medicare and Medicaid that 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, Hospital received payments to

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

which it was not entitled. Any release provided under this Settlement Agreement is limited to 482.89 claims submitted by the Hospital for services provided at Columbia Regional Hospital during the time period specified above, and does not release any causes of action arising out of any 482.89 claims for medical services provided at any hospital other than Columbia Regional Hospital in Columbia, Missouri.

G. 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 Hospital represents that such response has been truthful, accurate, and complete to the best of its knowledge, information and belief.

H. Hospital denies the contentions of the United States as set forth in Paragraph F above and as set forth in the [UNDER SEAL]. For the purposes of this Settlement Agreement, "Under Seal" is defined in an October 7, 1999 letter from the United States to Hospital's counsel.

I. 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:

A. Hospital agrees to pay to the United States \$359,254.00 (the "Settlement Amount"), as follows: Hospital agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Western District of Missouri. Hospital agrees to make this electronic funds transfer within 10 business days after its receipt of a fully executed copy of this Settlement Agreement and written electronic funds transfer instructions, whichever happens last.

B. Hospital agrees that they will continue to cooperate fully and in good faith with the United States in its investigation into the Covered Conduct, and any civil or criminal prosecution of any person concerning the Covered Conduct, and concerning similar matters involving other hospitals or others persons or entities, by providing accurate, truthful, and complete information to the United States. Nothing in this Paragraph, however, affects any privilege that might be available to Hospital or any statutory or regulatory obligation of Hospital, or Hospital's ability to object to the request on the

grounds of such privilege or obligation; the United States reserves its right to contest the assertion of any such privilege or obligation by Hospital.

C. The 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.

D. Subject to the exceptions in Paragraph F below, in consideration of the obligations of Hospital set forth in this Agreement, conditioned upon Hospital's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) and Relator will and hereby do agree to release the Hospital, together with its current and former employees, officers, and directors, parent corporations, each of its direct and indirect subsidiaries, brother or sister corporations, divisions, affiliates, and the successors and assigns of any of them, 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. Specifically, in

addition to the foregoing, Relator, for each and all of the foregoing entities and persons identified in this paragraph, expressly releases all claims or causes of action of any kind arising out of or pertaining to the Covered Conduct and expressly waives all claims known and unknown to Relator which it may have or may make relating in any way to the Covered Conduct.

E. By this Agreement, Relator and Relator's Counsel will and hereby do release Hospital and each and all of the entities and persons identified in the paragraph III(D) above from any claim relating to the Covered Conduct that the Relator, and/or Relator's counsel may have under 31 U.S.C. § 3730(d) to pay Relator or Relator's counsel any reasonable attorneys' fees, expenses and costs that are related to or associated with the Covered Conduct.

F. 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 the hospital) are any and all of the following:

- (1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability;
- (3) Except as otherwise explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any claims based upon such obligations as are created by this Agreement;

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

(7) Any claims based on a failure to deliver items or services due;

(8) Any civil or administrative claims against individuals, including current or former directors, officers, employees, agents or shareholders of Hospital who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

G. Hospital waives and will not assert any defenses Hospital 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 the Double Jeopardy or Excessive Fines Clause of the Constitution or the holding or principles set forth in *Hudson v. United States*, 118 S.Ct. 488 (1997); *United States v. Halper*, 490 U.S. 435 (1989), and *Austin v. United States*, 113 S. Ct. 2801 (1993), and agrees that the Settlement Amount is not punitive in nature or effect for purposes of such criminal prosecution or administrative action. 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.

H. After this Agreement is executed and the payment described in paragraph III(A) has been received by the United States, the United States and Relator will notify the Court that all Parties have stipulated that Hospital be dismissed with prejudice from [UNDER SEAL], and will make reasonable efforts to ensure Hospital's dismissal from [UNDER SEAL].

I. The Amount that Hospital must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph III(A) 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 or Medicaid, or any State payer, related to the Covered Conduct; and Hospital agrees not to resubmit to any Medicare carrier or intermediary or Medicaid or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

J. Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital 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 Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees and including the obligations undertaken pursuant to the Settlement Agreement), (4) the negotiation of this Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Champus/TRICARE Program, and FEHBP (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital, and it 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 Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital to the Medicare, Medicaid, TRICARE, Champus, RRB, or FEHBP programs.

K. Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, and FEHBP fiscal agents, any unallowable costs (as defined in paragraph III(J)) 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 Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital 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. Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital agrees that the United States will be entitled to recoup from Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional Hospital 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 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 Lifemark Hospitals of Missouri, Inc.

d/b/a Columbia Regional Hospital or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in paragraph J) on Lifemark Hospitals of Missouri, Inc. d/b/a Columbia Regional 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.

L. This Agreement is intended to be for the benefit of the Parties only, including the Hospital and each and all of the entities and persons identified in paragraph III(D) above, and by this instrument the Parties do not release any claims against any other person or entity for any conduct other than the Covered Conduct.

M. 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. Hospital waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

N. Hospital expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. Section 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 Hospital, within the meaning of 11 U.S.C. Section 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

O. 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.

P. Hospital and the Relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

Q. 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 Missouri, Western Division.

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

S. The undersigned individuals signing this Agreement on behalf of Hospital and Relator represent and warrant that they are authorized by Hospital or the Relator to execute this Agreement. 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.

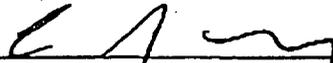
T. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

U. This Agreement is binding on successors, transferees, and assigns.

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

THE UNITED STATES OF AMERICA

DATED: 12-27-99

BY: 

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THE UNITED STATES OF AMERICA

DATED: 7/14/00

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

LIFEMARK HOSPITALS OF MISSOURI, INC. D/B/A
COLUMBIA REGIONAL HOSPITAL

DATED: 1/13/00

BY: [Signature]

DATED: 1/13/00

BY: [Signature]
Counsel for Lifemark Hospitals
of Missouri, Inc. d/b/a
Columbia Regional Hospital

RELATOR

DATED: 1/7/00

BY: MSH
FOR H.O.T.

DATED: 1/7/00

BY: MSH
Attorney
Counsel for Relator

MSH