

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), 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); and Clarksville Memorial Hospital, a ^{related} entity of Gateway Health System, ^{inc.} (GHS) (hereafter referred to as "the Parties"), through their authorized representatives. gm

II. PREAMBLE

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

A. GHS is a health care provider, and submitted or caused to be submitted, claims to Medicare for the inpatient treatment of Medicare beneficiaries.

B. The United States contends that GHS 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. §§ 1395-1395 ddd(1997).

C. 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.

D. The Medicare program relies 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 by GHS with the principal diagnosis code of 482.89 (pneumonia due to

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

“other specified bacteria”).

F. The United States contends that it has certain civil claims against GHS 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 5 below, for engaging in the following alleged conduct during the period from 1993 through 1997 in that GHS submitted or caused to be submitted claims to Medicare with the principal diagnosis code of 482.89 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, GHS received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against GHS under the provisions for permissive exclusion from Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, and the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, for the Covered Conduct.

H. GHS 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 the Medicare Program with the principal diagnosis code of 482.89, and GHS represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. GHS does not admit the contentions of the United States as set forth in Paragraphs F and G above and as set forth in [UNDER SEAL].

J. 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:

1. GHS agrees to pay to the United States \$815,902.00 (the "Settlement Amount") as follows: GHS agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by Michael F. Hertz, Director, Commercial Litigation Branch. GHS agrees to make this electronic funds transfer no later than the effective date of this Agreement.

2. GHS agrees to cooperate fully and in good faith with the United States in the administrative, civil or criminal investigation or 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, GHS 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.

3. GHS has entered into a Corporate Integrity Agreement with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. GHS will implement its

obligations under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

4. GHS releases the United States, HHS, and each of their 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.

5. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of GHS set forth in this Agreement, conditioned upon GHS's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in paragraph 4), and Relator agree to release GHS, 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 GHS.

6. In consideration of the obligations of GHS set forth in this Agreement, conditioned upon GHS's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against GHS 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 this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude GHS 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 the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 7, below.

7. 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 GHS) 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) Any administrative liability, including mandatory exclusion from Federal health care programs, except as explicitly otherwise stated in this Agreement;

(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 GHS;

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

(8) Any claims against any individuals, including officers and

employees.

8. GHS 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 or Excessive Fines Clause of the United States Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. GHS 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.

9. The Amount that GHS must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 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 any State payer, related to the Covered Conduct; and GHS agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. GHS 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 GHS in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and any civil and any criminal investigation(s) of the matters covered by this Agreement, (3) GHS's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and any civil and any criminal investigation(s) in

connection with the matters covered by this Agreement (including attorney's fees and the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement), (4) the negotiation of this Agreement and the Corporate Integrity 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, Veterans Affairs Program, and Federal Employee Health Benefits Program (hereafter, "Unallowable Costs"). These Unallowable Costs will be separately estimated and accounted for by GHS, and GHS 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 GHS or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

GHS further agrees that within ⁹⁰~~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, 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 GHS 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. GHS agrees that the United States will be entitled to recoup from GHS any overpayment as a result of the inclusion of such Unallowable Costs on previously-submitted cost

gzn

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 GHS or any of its subsidiaries on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on GHS 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.

11. 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.

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

13. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the Court that the parties stipulate and request that GHS be dismissed with prejudice from the action captioned [UNDER SEAL]

14. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release GHS, 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.

15. Conditioned on GHS's payment in full of the Settlement Amount, Relator shall

receive from the United States a payment amounting to \$114,226.28 of Medicare settlement proceeds. The United States shall pay Relator this amount within a reasonable time after receipt by the United States from GHS of the Settlement Amount. 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.

16. On receipt of the payment described in Paragraph 15 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 GHS, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from GHS, and in full satisfaction and settlement of claims under this Agreement.

17. 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.

18. GHS represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. 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 Middle District of Tennessee, 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.

20. 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 GHS and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement attached as Exhibit A.

21. The undersigned individual signing this Agreement on behalf of GHS represents and warrants that (s)he is authorized to execute this Agreement on behalf of that entity. 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.

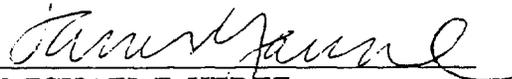
22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

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

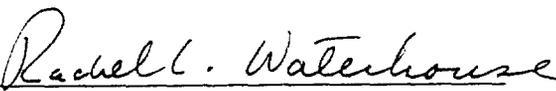
24. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

DATED: 1/24/01

BY: 
MICHAEL F. HERTZ
JOYCE R. BRANDA
JAMIE ANN YAVELBERG
DIANA J. YOUNTS
Attorneys
U.S. Department of Justice
Commercial Litigation Branch
Civil Division

DATED: 7/13/01

BY: 
RACHEL WATERHOUSE
Assistant United States Attorney
United States Attorneys Office for the

Middle District of Tennessee
United States Department of Justice

DATED: 7/25/07

BY: [Signature]

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

GATEWAY HEALTH SYSTEM / CLARKSVILLE MEMORIAL HOSPITAL

DATED: _____

BY: _____

RANDALL L. KELLEY
CEO

DATED: _____

BY: _____

JILL B. NOLAN, Esq.
Counsel for GHS

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: _____

BY: _____

MICHAEL HOLSTON
DRINKER, BIDDLE & REATH
Attorneys for Relator,
Health Outcomes Technologies

Middle District of Tennessee
United States Department of Justice

DATED: _____

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

GATEWAY HEALTH SYSTEM / CLARKSVILLE MEMORIAL HOSPITAL

DATED: 7/23/01

BY: *Randall L. Kelley*

RANDALL L. KELLEY
CEO

DATED: 7-23-01

BY: *Jill B. Nolan*

JILL B. NOLAN, Esq.
Counsel for GHS

RELATOR, HEALTH OUTCOMES TECHNOLOGIES

DATED: _____

BY: _____

MICHAEL HOLSTON
DRINKER, BIDDLE & REATH
Attorneys for Relator,
Health Outcomes Technologies

Middle District of Tennessee
United States Department of Justice

DATED: _____

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

GATEWAY HEALTH SYSTEM / CLARKSVILLE MEMORIAL HOSPITAL

DATED: _____

BY: _____

RANDALL L. KELLEY
CEO

DATED: _____

BY: _____

JILL B. NOLAN, Esq.
Counsel for GHS

RELATOR. HEALTH OUTCOMES TECHNOLOGIES

DATED: 7/23/01

BY: _____


MICHAEL HOLSTON
DRINKER, BIDDLE & REATH
Attorneys for Relator,
Health Outcomes Technologies