

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement ("Agreement") is entered into among 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"); Pennock Hospital ("Hospital"); and the Relator, Health Outcome Technologies, (hereafter referred to as "the Parties"), through their authorized representatives.

### II. PREAMBLE

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

- A. Hospital is a health-care provider doing business in Hastings, Michigan.
- B. The United States contends that 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;
- C. Medicare payments to 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 program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.<sup>1</sup>
- E. The United States conducted an investigation into inpatient payment claims submitted to Medicare by Hospital from October 1, 1992, through December 31, 1995, with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria").

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

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 2 below, for engaging in the following alleged conduct: during the period from October 1, 1992, through December 31, 1995, Hospital 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, Hospital received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims, as specified in Paragraph 3 below against Hospital 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, for the Covered Conduct.

H. 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 the Medicare program 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 and ability.

I. Hospital does not admit the contentions of the United States as set forth in Paragraphs F and G above.

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. Settlement Amount: Hospital agrees to pay to the United States the sum of Eight-Hundred Fifty Thousand and no/100 dollars (\$850,000.00) (the "Settlement Amount"). The Settlement Amount shall be paid as follows: Hospital agrees to make one payment of \$850,000.00 by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Western District of Michigan. Hospital agrees to make this electronic funds transfer no later than the Effective Date of this Agreement.

2. United States' Release: Subject to the exceptions in Paragraph 4 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, and its agencies and departments), agrees to release Hospital, 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 Hospital.

3. OIG-HHS Reservation: OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Hospital, and/or its officers, directors, and employees from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

4. Scope of Agreement: 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 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 and permissive 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 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.

5. Double Jeopardy; Excessive Fines: Hospital waives and shall 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 Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. 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.

6. Hospital Release: Hospital releases the United States, HHS, and each of their agencies, officers, agents, employees, and contractors and their employees 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.

7. Submission of Claims: The amount that Hospital 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 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.

8. Hospital agrees to the following:

a. Unallowable Costs Defined: Hospital agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") 48 C.F.R. § 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 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) 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), (4) the negotiation and performance of this Agreement, and (5) the payments made pursuant to this Agreement, including any costs and attorney's fees, 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").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Hospital in non-reimbursable cost centers, and Hospital 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 Hospital or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA, or FEHBP programs.

c. Treatment of Unallowable Cost Previously Submitted for Payment: Hospital further agrees that within 60 days of the effective date of this Agreement it shall 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 8) 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 Hospital or any of its subsidiaries, 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. Hospital agrees that the United States, at a minimum, shall be entitled to recoup from 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 Hospital or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph 8) on 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.

9. Limitation on Releases: 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.

10. Billing for Covered Conduct: Hospital 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.

11. Solvency: 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 548(a)(1)(A)(ii)(I), 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 (1) 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. § 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Hospital was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

12. Release of Hospital By Relator. By this Agreement, the Relator and Relator's counsel release and discharge and are deemed to have released and forever discharged Hospital, its current and former parent corporations, and its predecessors, successors, assigns, and affiliates from any and all claims or causes of action that Relator and/or Relator's counsel may have against Hospital, its current and former parent corporations, and its predecessors, successors, assigns, and



affiliates, including any claims under 31 U.S.C. § 3730(d) to pay Relator's or Relator's counsel's attorneys' fees, expenses or costs.

13. Payment of Relator's Share. Conditioned upon Hospital's payment in full of the Settlement Amount, Relator shall receive from the United States a payment totaling 14% of the Settlement Amount equal to One Hundred Nineteen Thousand and no/100 dollars (\$119,000.00). The United States shall pay Relator this amount within a reasonable time after receipt by the United States from Hospital 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 collection or payment of any funds pursuant to this Agreement or the payment of any Relator's share payments, except as provided herein for funds actually collected and received by the United States.

14. Relator's Release of United States. On receipt of the payments described in Paragraph 13 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 Hospital including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from Hospital, and in full satisfaction and settlement of claims under this Agreement.

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

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

17. Governing Law: 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 Michigan.

18. Entire Agreement; Amendments: This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

19. Notification of Court: At the time of execution of this Settlement Agreement, the Parties agree to execute a stipulation and proposed order of dismissal. After this Agreement is executed and the Settlement Amount is received by the United States, the United States will file the stipulation for dismissal with the Court and request that the Court dismiss the Hospital from the action captioned *United States ex rel. Health Outcome Technologies v. Pennock Hospital*, Civil Action No. 1:01-CV-292, in the United States District Court for the Western District of Michigan, with prejudice.

20. Authority: The undersigned individuals signing this Agreement on behalf of Hospital and Relator represent and warrant that they are authorized to execute this Agreement on behalf of their respective 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.

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

22. Headings: The headings used in the Agreement are solely for the purpose of reference, are not part of the Agreement of the Parties, and shall not affect in any way the meaning or interpretation of the Agreement.

23. Effective date: This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date").

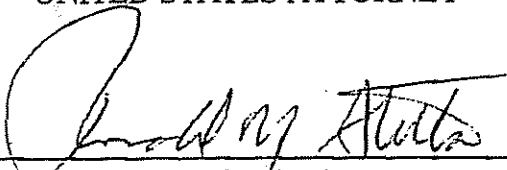
24. Disclosure: All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

25. Successor Liability: This Agreement is binding on Hospital's successors, transferees, heirs, and assigns.

**THE UNITED STATES OF AMERICA**

MARGARET M. CHIARA  
UNITED STATES ATTORNEY

DATED: 7/10/03

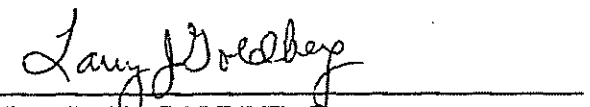
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DATED: July 10, 2003

BY: 

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U.S. Department of Justice

DATED: July 14, 2003

BY: 

LARRY J. GOLDBERG  
Assistant Inspector General for Legal Affairs  
Office of Counsel to Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

**HOSPITAL**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Pennock Hospital

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

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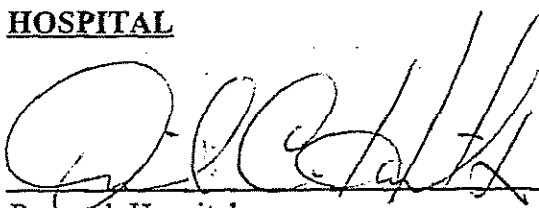
BY: \_\_\_\_\_

LARRY J. GOLDBERG  
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HOSPITAL

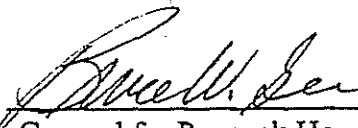
DATED: 7-1-03

BY: \_\_\_\_\_

  
Penmook Hospital

DATED: 7-1-03

BY: \_\_\_\_\_

  
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RELATOR, HEALTH OUTCOME TECHNOLOGIES

DATED: \_\_\_\_\_

BY: Michael Holston /mit  
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Attorneys for Relator  
Health Outcome Technologies