

SETTLEMENT AGREEMENTI. 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"); Relator Health Outcomes Technologies, Inc. ("Relator"); and Robert F. Kennedy Medical Center ("RFKMC") (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:

A. RFKMC is a health care provider, and submitted, or caused to be submitted, claims to Part A of the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg ("Medicare"), for the inpatient treatment of Medicare beneficiaries.

B. 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.

C. The Medicare program relies upon participating hospitals to properly indicate the principal diagnosis through

the use of standard diagnosis codes.

D. The United States conducted an investigation into inpatient payment claims submitted to Medicare with the principal diagnosis code of ICD-9-CM 482.89 (pneumonia due to "other specified bacteria").

E. The United States contends that it has certain civil claims against RFKMC 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 the following alleged conduct during the period from December 1992 to November 1997: RFKMC knowingly submitted or caused to be submitted claims to Medicare Part A with the principal diagnosis code of ICD-9-CM 482.89, but the principal diagnosis code was not justified or supported by the corresponding medical records. The United States alleges that, as a result of these claims, RFKMC received payments to which it was not entitled. The conduct described in this paragraph is referred to as the "Covered Conduct."

F. The United States also contends that it has certain administrative claims against RFKMC 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

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

for civil monetary penalties, 42 U.S.C. § 1320a-7a, for engaging in the Covered Conduct.

G. RFKMC has provided 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 ICD-9-CM 482.89, and RFKMC represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

H. RFKMC denies the contentions of the United States as set forth in Paragraphs E and F above and as set forth in United States ex rel. Health Outcomes Technologies Inc. v. Robert F. Kennedy Medical Center, No. CV 01-6840-ABC (C.D. Ca.) (UNDER SEAL) ("the Civil Action"). This Agreement is neither an admission of liability by RFKMC nor a concession by the United States that its claims are not well founded.

I. 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. RFKMC agrees to pay to the United States \$2,000,000.00 (the "Settlement Amount") as follows: RFKMC agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorneys Office for the Central District of California. RFKMC agrees to make this electronic funds transfer no later than five days from the Effective Date of this Agreement.

2. RFKMC agrees to cooperate fully and in good faith with the United States in the administrative, civil or criminal investigation or prosecution of any other person concerning the Covered Conduct by providing accurate, truthful, and complete information whenever, wherever, to whomever and in whatever form the United States reasonably may request. Upon reasonable notice, RFKMC will furnish to the United States all documents and records in its possession, custody or control relating to the Covered Conduct, other than documents that are privileged or attorney work product, and will make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and testimony, provided however, that notwithstanding any provision of this Agreement: (1) RFKMC is not required to request of its present or former officers, directors, employees or agents that they forego seeking the advice of an attorney nor that they act contrary to that advice; (2) RFKMC is not required to take any action against

its officers, directors, employees or agents for following their attorney's advice; and (3) RFKMC is not required to waive any privilege or claim of work product.

3. RFKMC has entered into a Corporate Integrity Agreement with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. RFKMC will implement its obligations under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

4. RFKMC 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 (including claims for attorneys' fees, costs and expenses of every kind and however denominated), causes of action, adjustments, and set-offs of any kind which RFKMC has asserted, could have asserted, or may assert in the future arising out of or pertaining to the Covered Conduct, including, without limitation, the investigation and prosecution of the Covered Conduct.

5. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of RFKMC set forth in this Agreement, and conditioned upon RFKMC's payment in full of the Settlement Amount, the United States, on behalf of itself, its officers, agents, agencies and departments, and Relator on behalf of itself and for its successors, attorneys, agents, and assigns, releases RFKMC, its parent corporation, predecessors,

subsidiaries, successors, assigns, directors, officers, and employees 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. Except as provided above, the United States expressly reserves any claims against any other entities and individuals.

6. In consideration of the obligations of RFKMC set forth in this Agreement and the Corporate Integrity Agreement referred to in Paragraph 3, and conditioned upon RFKMC's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain, from instituting, directing or maintaining, any administrative action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against RFKMC under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks and other prohibited activities), 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 RFKMC or others from Medicare, Medicaid or other federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct.

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 RFKMC and the Relator) are any and all of the following:

(1) Any civil, criminal or administrative claims or liability arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly otherwise 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 or liability 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 RFKMC; and

(7) Any claims based on a failure to deliver goods or services due.

8. RFKMC 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 Clauses of the Fifth and Eighth Amendments of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. RFKMC 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. RFKMC 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. RFKMC agrees to the following:

(a) Unallowable Costs Defined: 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 RFKMC, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on

Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

(1) the matters covered by this Agreement,
(2) the United States' audits and civil investigation of the matters covered by this Agreement,

(3) RFKMC's investigation, defense, and corrective actions undertaken in response to the United States' audits and civil investigation in connection with the matters covered by this Agreement (including attorneys' fees),

(4) the negotiation and performance of this Agreement,

(5) the payment RFKMC makes to the United States pursuant to this Agreement and any payments that RFKMC may make to Relator,
and

(6) the negotiation of, and obligations undertaken pursuant to the CIA to:

(i) Retain an independent review organization to perform annual reviews as described in Section III of the CIA;
and

(ii) prepare and submit reports to the OIG-HHS.

All costs described or set forth in this Paragraph 10(a) are hereafter, "unallowable costs". However, nothing in this paragraph affects the status of costs that are not allowable based on any other authority applicable to RFKMC.

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

(c) Treatment of Unallowable Costs Previously Submitted for Payment: RFKMC further agrees that, within 90 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) 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 RFKMC 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. RFKMC agrees that the United States, at a minimum, will be entitled to

recoup from RFKMC 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 RFKMC or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on RFKMC 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, except as provided in paragraphs 5 and 12, by this instrument the Parties do not release any claims against any other person or entity.

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

13. The United States intends to separately file a Notice of Intervention in the Civil Action, Proposed Settlement Order, and a Joint Stipulation for Order of a Dismissal of the Civil Action. Upon receipt of the payments described in Paragraph III.1 and III.15, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal, in the form attached hereto as Exhibit B.

14. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release RFKMC 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 RFKMC's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$280,000.00. The United States shall pay Relator this amount within a reasonable time after receipt by the United States from RFKMC 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 of any Relator's share payments except as provided herein for funds actually collected and received by the United States.

16. Subject to its receipt of the payment described in

Paragraph 15 above, Relator releases 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 RFKMC, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from RFKMC, 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. RFKMC and Relator represent 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 Central District of California, 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, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that

only RFKMC and OIG-HHS must agree in writing to modify the Corporate Integrity Agreement.

21. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

22. The undersigned individuals signing this Agreement on behalf of RFKMC represent and warrant that they are authorized to execute this Agreement on behalf of RFKMC. 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.

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

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

25. The Effective Date of this Agreement is the date it is signed by the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

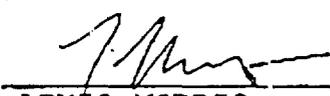
DATED: 11/21/2002

BY: 
DONNA C. MAIZEL
Assistant United States Attorney

DATED: _____

BY: _____
MICHAEL F. HERTZ
JOYCE R. BRANDA
DIANA J. YOUNTS
Civil Division
U.S. Department of Justice

DATED: 1/3/03

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

25. The Effective Date of this Agreement is the date it is signed by the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

DONNA C. MAIZEL
Assistant United States Attorney

DATED: 1/21/03

BY: *Diana J. Younts*

MICHAEL F. HERTZ
JOYCE R. BRANDA
DIANA J. YOUNTS
Civil Division
U.S. Department of Justice

DATED: _____

BY: _____

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

ROBERT F. KENNEDY MEDICAL CENTER

DATED: 1-15-03

BY: James A. Bevo
Robert F. Kennedy Medical
Center

DATED: _____

BY: _____
DAVID O. STEWART
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1301 K Street
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Counsel for Robert F. Kennedy
Medical Center

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: _____

BY: _____
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Trujillo Rodriguez
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Counsel for Relator
Health Outcomes Technologies

ROBERT F. KENNEDY MEDICAL CENTER

DATED: _____

BY: _____

Robert F. Kennedy Medical
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DATED: 1/16/03

BY: David O. Stewart

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RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: _____

BY: _____

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ROBERT F. KENNEDY MEDICAL CENTER

DATED: _____

BY: _____

Robert F. Kennedy Medical
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DATED: _____

BY: _____

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Medical Center

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: 1-17-03

BY:  _____

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