

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"); the Relator, Health Outcome Technologies; and Roger Williams Hospital and its parent Roger Williams Medical Center Corporation (collectively referred to herein as "RWMC") (all of the above entities will be 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. RWMC is a health care provider, and submitted or caused to be submitted, claims to Medicare for the inpatient treatment of Medicare beneficiaries.
- B. Relator is a corporate resident of the Commonwealth of Pennsylvania. On February 27, 1996, the relator filed a qui tam action that included claims against RWMC. Those claims are now pending in the United States District Court for the District of Rhode Island in the action captioned *United States ex rel. Health Outcomes Technologies v. Roger Williams Medical Center* ("Civil Action").
- C. RWMC submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395 ggg ("Medicare").

D. 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.

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

F. The United States conducted an investigation into inpatient payment claims submitted to Medicare by RWMC with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria"). RWMC has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for individuals for whom claims were submitted to the Medicare program with the principal diagnosis code of 482.89, and RWMC represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

G. The United States contends that it has certain civil claims against RWMC 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 October 1, 1992, through September 30, 1995: RWMC 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, RWMC received payments to which it was not entitled.

¹ International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM") contains the standard diagnosis codes.

H. The United States also contends that it has certain administrative claims against RWMC 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.

I. This Agreement is not an admission by the United States that its claims set forth above are not well founded.

J. RWMC does not admit the contentions of the United States as set forth in Paragraphs G and H above and as set forth in the Civil Action.

K. 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. (a) RWMC agrees to pay to the United States Four Hundred Thousand Dollars (\$400,000) (the "Settlement Amount") for the Covered Conduct as follows: RWMC agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Department of Justice, Commercial Litigation Branch. RWMC agrees to make said payment in five (5) equal installments of Eighty Thousand Dollars (\$80,000), plus five and one half percent (5.5%) annual simple interest. The first installment shall be paid no

later than the Effective Date of this Agreement, and each subsequent installment shall be paid on or before the dates indicated as follows:

	<u>Installment Amount</u>	<u>Interest</u>	<u>Total Payment</u>
Agreement Effective Date	\$80,000	\$0	\$80,000
90 Days Following Agreement Effective Date	\$80,000	\$4,400	\$84,400
180 Days Following Agreement Effective Date	\$80,000	\$3,300	\$83,300
270 Days Following Agreement Effective Date	\$80,000	\$2,200	\$82,200
360 Days Following Agreement Effective Date	\$80,000	\$1,100	\$81,100

(b) RWMC's obligations to make the payments described in Subparagraph (a) above shall be secured pursuant to the Security Agreement ("Security Agreement"), a copy of which is attached as Exhibit 1, which is incorporated into this Agreement by reference.

(c) If RWMC fails to make any of the payments described in Subparagraph (a) at the specified time, the United States may exercise any of the following options, either individually or in concert: (1) move to enforce the terms of the Agreement, (2) exercise its rights under the Security Agreement, or (3) rescind any release in this Agreement, retain any payments made to that point, and reinstate the Civil Action, with Relator retaining all rights and interests under 31 U.S.C. § 3730 and RWMC receiving credit in the Civil Action for its payments to that point and any amount collected by the United States under the Security Agreement.

2. RWMC agrees to cooperate fully, truthfully, 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, RWMC shall make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and testimony and shall furnish to the United States, upon reasonable request, all documents and records in its possession, custody, or control relating to the Covered Conduct. Nothing in this Paragraph, however, affects any statutory, regulatory, or common law privilege or doctrine (including but not limited to the work product doctrine) that might be available to RWMC or any individuals, or RWMC's ability to object to the request on the grounds of such privilege or doctrine; the United States reserves its right to contest the assertion of any such privilege or doctrine by RWMC.

RWMC agrees to the following specific representations and undertakings:

(a) RWMC shall expend all reasonable efforts to provide such information, and related documents, within ten (10) working days of receipt of a request. If necessary, RWMC shall notify the United States of any difficulty in timely complying with any such request, and shall advise the United States of the additional amount of time estimated to be needed to respond to such request.

(b) RWMC understands that it has undertaken an obligation to provide truthful and accurate information and testimony by itself and through its employees. RWMC agrees that it shall take no action that could cause any person to fail to provide such testimony (other than the assertion of a privilege or statutory or regulatory obligation), or could cause any

person to believe that the provision of truthful and accurate testimony could adversely affect such person's employment or any contractual relationship.

3. RWMC has entered into a Corporate Integrity Agreement ("CIA") with HHS, attached as Exhibit 2, which is incorporated into this Agreement by reference. RWMC shall immediately upon execution of the CIA implement its obligations under that CIA as set forth in the CIA.

4. RWMC fully and finally 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.

5. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of RWMC set forth in this Agreement, conditioned upon RWMC's payment in full of the Settlement Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments referenced above in Paragraph 4), and Relator agree to release RWMC, 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 RWMC.

6. In consideration of the obligations of RWMC set forth in this Agreement, and the CIA incorporated by reference, conditioned upon RWMC's payment in full of the Settlement Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement), 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 RWMC 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 the CIA and as reserved in this paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude RWMC 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 RWMC) 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 RWMC;
- (g) Any claims based on a failure to deliver items or services due; and
- (h) Any claims against any individuals, including officers and employees.

8. RWMC 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. RWMC warrants that the Financial Statements are thorough, accurate, and complete. RWMC 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 RWMC has made no misrepresentations on, or in connection with, the Financial Statements. In the event the United States learns of asset(s) in which RWMC 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 RWMC on, or in connection with, the Financial Statements, the United States may at its option: (1) rescind this Agreement and file suit upon the underlying claims described in the Preamble to this Agreement; or (2) let the Agreement stand and collect the full Settlement Amount plus up to an additional one hundred percent (100%) of the Settlement Amount. RWMC agrees not to contest any collection action undertaken by the United States pursuant to this provision.

9. In the event that the United States, pursuant to Paragraphs 1(c)(3) or 8 above, opts to rescind this Agreement, RWMC 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 that: (1) are filed by the United States within 90 calendar days of written notification to RWMC 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.

10. RWMC 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 Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. RWMC agrees that this Agreement 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.

11. The amounts that RWMC must pay pursuant to this Agreement (as per Paragraph 1 above) shall not be decreased as a result of the denial of claims for payment now being withheld by any Medicare carrier or intermediary or any State payer related to the Covered Conduct; and RWMC agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and not to appeal any such denials of claims.

12: RWMC agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation ("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 RWMC, 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, Veterans Affairs Program (VA), and Federal Employees Health Benefits Program (FEHBP):

- (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) RWMC'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 RWMC makes to the United States pursuant to this Agreement, 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 16(a) are hereafter, "unallowable costs").

Nothing in this Paragraph affects the status of costs that are not allowable based upon any other authority applicable to RWMC.

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

(c) Treatment of Unallowable Costs Previously Submitted for Payment: RWMC 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) 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 RWMC or any of its subsidiaries or affiliates, 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. RWMC agrees that the United States, at a minimum, shall be entitled to recoup from RWMC 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 RWMC or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on RWMC 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.

13. 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.

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

15. RWMC 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 financially 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 RWMC, 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.

16. In the event RWMC commences, or a third party commences, within 91 days of the Effective Date of this Agreement or any payment of the Settlement Amount specified in Paragraph 1, 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 RWMC's debts, or seeking to adjudicate RWMC as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for RWMC or for all or any substantial part of RWMC's assets, RWMC agrees as follows:

(a) RWMC's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and RWMC shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) RWMC's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) RWMC 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 RWMC.

(b) In the event that RWMC'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 RWMC for the claims that would otherwise be covered by the releases provided in Paragraphs 5 and 6 above. If the United States chooses to do so, RWMC agrees: (i) that any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude RWMC 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 RWMC shall not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) not to 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 that are brought by the United States within 180 calendar days of written notification to RWMC that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) that the United States has a valid claim against RWMC for at least \$411,000. 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) RWMC acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

17. 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.

18. RWMC represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. Relator agrees and confirms that this Agreement and the settlement of the allegations in the complaint in the Civil Actions as they relate to RWMC are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

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 shall be the United States District Court for the District of Rhode Island, except that disputes arising under the CIA (attached as Exhibit 2) shall be resolved exclusively under the dispute resolution provisions set forth in the CIA.

20. This Agreement, including the CIA and the Security Agreement, which are 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 RWMC and the OIG-HHS must agree in writing to modification of the CIA contained in Exhibit 2.

21. After this Agreement is executed, the first installment of the Settlement Amount is received by the United States, and RWMC complies with Sub-paragraph 6(b) of the Security Agreement, the United States and Relator shall sign and file in the Civil Action a Notice of Intervention against RWMC and a Joint Stipulation of Dismissal with prejudice of the claims against RWMC pursuant to the terms of this Agreement. The Joint Stipulation of Dismissal shall provide that (1) the court shall retain jurisdiction to enforce the terms of this Agreement and (2) the dismissal shall be subject to the right of the United States to rescind any release provided in this Agreement and/or to reinstate the Civil Action as described in this Agreement.

22. By this Agreement, the Relator and Relator's Counsel shall release and shall be deemed to release RWMC, 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.

23. Conditioned on RWMC's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to Fifty Seven Thousand Five Hundred Forty Dollars (\$57,540.00). The United States shall pay Relator this amount within a reasonable time after receipt by the United States from RWMC 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.

Relator further agrees that its share of the proceeds from this Agreement shall be paid to Relator over time consistent with Paragraph 1 of this Settlement Agreement as follows: after RWMC pays the United States the First Installment, Relator shall receive the amount of \$11,200.00; after RWMC pays the United States the Second Installment, Relator shall receive the amount of \$11,816.00; after RWMC pays the United States the Third Installment, Relator shall receive the amount of \$11,662.00; after RWMC pays the United States the Fourth Installment, Relator shall receive the amount of \$11,508.00; and after RWMC pays the United States the Fifth Installment, Relator shall receive the amount of \$11,354.00.

24. On receipt of the payments described in Paragraph 23 above, Relator shall release and shall 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 RWMC, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from RWMC, and in full satisfaction and settlement of claims under this Agreement.

25. The undersigned individuals signing this Agreement on behalf of RWMC 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.

26. This Agreement is binding on RWMC's successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: 9/10/02

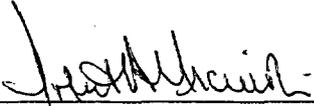
BY: 
KEITH E. DOBBINS
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 9/6/02

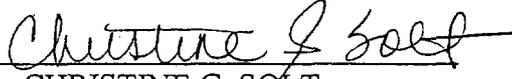
BY: 
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

ROGER WILLIAMS MEDICAL CENTER - DEFENDANT

DATED: 9/19/02

BY: 
ROBERT A. URCIUOLI
President & Chief Executive Officer
Roger Williams Medical Center

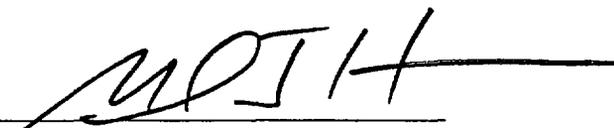
DATED: 9/11/02

BY: 
CHRISTINE G. SOLT
Choate, Hall & Stewart
Counsel for Roger Williams Medical Center

HEALTH OUTCOMES TECHNOLOGIES - RELATOR

DATED: 9/17/02

BY:



Drinker, Biddle & Reath
Attorneys for Relator
Health Outcomes Technologies