

SETTLEMENT AGREEMENT

I. 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 Department of Health and Human Services ("HHS") (collectively the "United States"); and St. Joseph Medical Center (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. St. Joseph Medical Center was a health care provider for the inpatient treatment of Medicare beneficiaries. In 1997, St. Joseph Medical Center was purchased by Baptist Memorial Health Care System ("BMHCS"), who closed the facility in 1998. BMHCS is not a party to this Agreement.

B. St. Joseph Medical Center 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 St. Joseph Medical Center for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by St. Joseph Medical Center.

D. The Medicare program relies upon a participating hospital to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹

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

E. The United States conducted an investigation into inpatient payment claims submitted to Medicare by St. Joseph Medical Center 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 St. Joseph Medical Center under common law doctrines as more specifically identified in Paragraph 2 below, for engaging in the following alleged conduct during the period from October 1, 1993 through September 30, 1996: St. Joseph Medical Center 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, St. Joseph Medical Center received payments to which it was not entitled.

G. Representatives of St. Joseph Medical Center 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 representatives of St. Joseph Medical Center represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

H. This Agreement is neither an admission of liability by St. Joseph Medical Center 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 pursuant to the Terms and Conditions 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. St. Joseph Medical Center agrees to pay to the United States \$700,000 (the "Settlement Amount") as follows: St. Joseph Medical Center 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 Tennessee. St. Joseph Medical Center agrees to make this electronic funds transfer no later than five (5) days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraphs 4 and 5 below, in consideration of the obligations of St. Joseph Medical Center set forth in this Agreement, conditioned upon St. Joseph Medical Center's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments referenced above in Paragraph 2), agrees to release St. Joseph Medical Center, its predecessors, successors, assigns, and affiliates, (collectively "Releasees") from any civil monetary claim the United States has or may have under the common law theories of payment by mistake, unjust enrichment, and breach of contract, for the Covered Conduct. The United States expressly reserves any claims against any entities and individuals other than the Releasees. No individuals are released by this Agreement.

3. 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 Releasees) are any and all of the following:

- a. Any civil, criminal, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code) or any regulations promulgated under the authority of any statute contained therein;
- b. Any criminal liability;
- c. Except as explicitly 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 liability 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 St. Joseph Medical Center;
- g. Any claims based on a failure to deliver items or services billed; and
- h. Any claims against any individuals, including officers and employees.

4. St. Joseph Medical Center 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 Clause in the Fifth Amendment of the Constitution or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. St. Joseph Medical Center 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.

5. St. Joseph Medical Center fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which St. Joseph Medical Center has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. The Settlement Amount that St. Joseph Medical Center must pay by electronic wire transfer pursuant to Paragraph 1 above, shall 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 St. Joseph Medical Center shall not resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

7. St. Joseph Medical Center agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 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 the St. Joseph Medical Center, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on contracts with the United States

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 Government's audit and civil and any criminal investigation of the matters covered by this Agreement;
- (3) St. Joseph Medical Center's investigation, defense, and corrective actions undertaken in response to the Government's audit and civil and any criminal investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment St. Joseph Medical Center makes to the United States pursuant to this Agreement, including attorneys fees.

However, nothing in this Paragraph affects the status of costs that are not allowable based on any other authority applicable to St. Joseph Medical Center

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

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

8. St. Joseph Medical Center 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)(B)(ii)(I), and shall remain solvent following its payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have

intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to St. Joseph Medical Center, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude 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 St. Joseph Medical Center was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

9. This Agreement is intended to be for the benefit of the Parties and Releasees only, and by this instrument the Parties do not release any claims against any other person or entity.

10. St. Joseph Medical Center 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, sponsors, legally responsible individuals, or third party payers. St. Joseph Medical Center waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

11. 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.

12. St. Joseph Medical Center represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

13. 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 Western District of Tennessee.

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

15. The undersigned individual signing this Agreement on behalf of St. Joseph Medical Center 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.

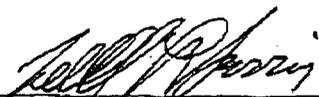
16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

17. This Agreement is binding on St. Joseph Medical Center's successors, transferees, and assigns.

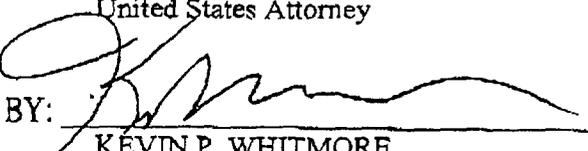
18. The Effective Date of this Agreement shall be the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 1-13-04

BY: 
TERRELL L. HARRIS
United States Attorney

DATED: January 13, 04

BY: 
KEVIN P. WHITMORE
Assistant United States Attorney

SISTERS OF SAINT FRANCIS HEALTH
SERVICES INCORPORATED d/b/a
ST. JOSEPH MEDICAL CENTER

DATED: 12/6/03

BY: *Kevin Leahy*
KEVIN LEAHY
President

DATED: 12/15/03

BY: *Patrick Downes*
PATRICK DOWNES, ESQUIRE
Counsel for Sister of Saint Francis Health Services
Incorporated d/b/a St. Joseph Medical
Center

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