

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), acting through the Civil Division of the United States Department of Justice and the United States Attorney for the Middle District of Tennessee; St. Mary's Warrick Hospital ("St. Mary's"); and the qui tam relator, Barry Steeley ("Relator") (the United States and all of the foregoing persons or entities are 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. St. Mary's is a provider of hospital services located at 1116 Millis Avenue in Boonville, Indiana.
- B. The United States contends that St. Mary's 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, and to the Medicaid program (codified in 42 U.S.C. §§ 1396-1396v, Title XIX of the Social Security Act, as amended) for the inpatient treatment of Medicare beneficiaries.
- C. On or around August 25, 1997, Barry Steeley (the Relator) filed a qui tam complaint under seal alleging violations of the False Claims Act by St. Mary's in the case styled United States ex rel. Barry Steeley v. Birman Managed Care, Inc., et al., Civil Action No. 3:97-0893 (M.D. Tenn.) (the "Qui Tam Action").
- D. Medicare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as determined 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

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

F. The United States investigated the allegations in the Qui Tam Action regarding inpatient payment claims submitted to Medicare by St. Mary's for patients with the principal diagnosis codes of 482.83 (pneumonia due to gram negative bacteria); 482.89 (pneumonia other specified bacteria); 507.0 (food/vomit pneumonitis); 384.0 (gram negative septicemia NOS); 384.2 (E coli septicemia); and 389.0 (septicemia NOS).

G. This Agreement governs the Relator's claims against St. Mary's based on the conduct alleged in the Qui Tam Action, and the civil claims the United States contends that it has against St. Mary's 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 4 below, for engaging in the following alleged conduct during the period from July 6, 1995 to December 30, 1996 (the "Covered Period"): St. Mary's submitted or caused to be submitted claims to Medicare with the principal diagnosis codes of 482.83 (pneumonia due to gram negative bacteria); 482.89 (pneumonia other specified bacteria); and 507.0 (food/vomit pneumonitis) 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. Mary's received payments from Medicare to which it was not entitled.

H. St. Mary's has provided documents and information in response to the United States' investigation of the Covered Conduct, including patient files for which claims were submitted to the Medicare Program with the principal diagnosis codes of 482.83 (pneumonia due to gram negative bacteria); 482.89 (pneumonia other specified bacteria); 507.0 (food/vomit pneumonitis); 384.0 (gram negative septicemia NOS); 384.2 (E coli septicemia); and 389.0 (septicemia NOS). St. Mary's represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. St. Mary's denies the contentions of the United States as set forth in Paragraph G above and as set forth in the Qui Tam Action. St. Mary's asserts its billing was reasonable and further asserts the diagnoses involved reflected the reasonable professional judgment of the physician treating the patient.

J. In order 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. Immediately upon execution of this Agreement by all Parties, St. Mary's shall pay to the United States \$137,000 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.
2. St. Mary's shall cooperate reasonably, truthfully and in good faith with the United States in the administrative, civil or criminal investigation or prosecution of any person not specifically released in this Agreement concerning the Covered Conduct, and concerning similar matters involving other hospitals and others in connection with the Qui Tam Action. Upon reasonable notice, St. Mary's shall 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 make available 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. St. Mary's releases the United States, the Department of Health and Human Services (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.
4. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of St. Mary's set forth in this Agreement, conditioned upon St. Mary'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 3), agrees to release St. Mary's, and each of its predecessors, successors, assigns, and affiliates (all of the foregoing collectively referred to as the "St. Mary's Released Parties") 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 the St. Mary's Released Parties.

5. Conditioned upon receipt of \$5,000 from St. Mary's for attorney's fees under 31 U.S.C. § 3730(d), in addition to St. Mary's payment of the Settlement Amount described in Paragraph 1, the Relator and Relator's Counsel release and will be deemed to release the St. Mary's Released Parties, from any claim that the Relator and/or Relator's Counsel may have arising from the filing of the Qui Tam Action, or under 31 U.S.C. § 3730(d) to pay Relator and Relator's Counsel any reasonable attorney's fees and costs. Relator expressly reserves any claims against any entities and individuals other than the St. Mary's Released Parties.

6. 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 St. Mary's and the Relator) 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) Except as explicitly 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 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 St. Mary's; and

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

7. St. Mary's 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. St. Mary's 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.

8. The Settlement Amount that St. Mary's must pay pursuant to this Agreement 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. Mary's 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.

9. St. Mary's 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 St. Mary's, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement,

(2) the United States' audit(s) and investigations(s) of the matters covered by this Agreement,

(3) St. Mary's investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and 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. Mary's makes to the United States pursuant to this Agreement and any payments that St. Mary's may make to Relator, including costs and attorneys fees,

are 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).

(All costs described or set forth in this Paragraph 9(a) are hereafter, "unallowable costs").

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

(c) Treatment of Unallowable Costs Previously Submitted for Payment: St. Mary's 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 St. Mary's 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. Mary's agrees that the United States, at a minimum, shall be entitled to recoup from St. Mary's any overpayment plus applicable interest as a result of the inclusion of

such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request for payment.

Any payment 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. Mary's or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on St. Mary's 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.

10. This Agreement is intended to be for the benefit of the Parties, and their successors and assigns, only and by this instrument the Parties do not release any claims against any other person or entity (other than the St. Mary's Released Parties). This agreement is not intended to be for the benefit of Birman Managed Care, Inc., Birman & Associates, Inc., or David N. Birman, MD, and by this instrument the United States does not release any claims against Birman Managed Care, Inc., Birman & Associates, Inc., or David N. Birman, MD.

11. St. Mary's 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. St. Mary's waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

12. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the United States District Court for the Middle District of Tennessee that (a) the Parties have reached a settlement; and (b) pursuant to this settlement the Parties have stipulated that: (i) the Relator dismisses all claims in the Qui Tam Action with prejudice as to him, and (ii) the United States dismisses with prejudice only those claims in the Qui Tam Action related to the Covered Conduct against St. Mary's, and the claims in the Qui Tam Action unrelated to the Covered Conduct are dismissed without prejudice as to the United States.

13. In consideration of the obligations of St. Mary's set forth in this Agreement, conditioned upon St. Mary's payment in full of the Settlement Amount, Relator, and/or Relator's Counsel, agrees to release the St. Mary's Released Parties 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. Relator expressly reserves any claims against any entities and individuals other than the St. Mary's Released Parties.

14. Conditioned on St. Mary's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to 17% of the Settlement Amount. The United States shall pay Relator this amount within a reasonable time after St. Mary's pays the Settlement Amount. It is expressly understood and agreed that the United States in no way promises, 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.

15. On receipt of the payment described in Paragraph 14 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 in the Qui Tam Action as against St. Mary's, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from St. Mary's, and in full satisfaction and settlement of claims under this Agreement. The Relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

16. Except as provided in Paragraph 5, the Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. St. Mary's and Relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

18. 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 Middle District of Tennessee.

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

20. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

21. The undersigned individuals signing this Agreement on behalf of St. Mary's represent and warrant that they are authorized to execute this Agreement on behalf of St. Mary's. 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. The Relator represents that he has the capacity to execute this Agreement, and that he has read it in its entirety.

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 the successors, transferees, and assigns of the Parties.

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

THE UNITED STATES OF AMERICA

DATED: 12/18/03

BY: Ellen Bowden McEntyre
ELLEN BOWDEN MCENTYRE
Assistant United States Attorney
Office of the
United States Attorney
Middle District of Tennessee

DATED: 12/22/03

BY: Robert McAuliffe
ROBERT J. MCAULIFFE
Trial Attorney
Civil Division
U.S. Department of Justice

ST. MARY'S HOSPITAL AND HEALTH CENTER

DATED: 12/16/03 BY: Keith D. Barber

Keith Barber, Esq.
Hall, Render, Killian, Heath, & Lyman
Suite 2000, Box 82604
One American Square
Indianapolis, IN 46282
Counsel for
St. Mary's Warrick Hospital

DATED: 12-15-03 BY: Frank Tideman

St. Mary's Warrick Hospital

RELATOR BARRY STEELEY

DATED: _____

BARRY STEELEY

DATED: _____

BY: _____
W. CHARLES BAILEY, JR.
Simms Showers LLP.
Twenty South Charles Street
Baltimore, Maryland 21201
Counsel for Relator
Barry Steeley

DATED: _____

BY: ROBERT J. MCAULIFFE
Trial Attorney
Civil Division
U.S. Department of Justice

ST. MARY'S HOSPITAL AND HEALTH CENTER

DATED: 12/16/03 BY: Keith D Barber

Keith Barber, Esq.
Hall, Render, Killian, Heath, & Lyman
Suite 2000, Box 82604
One American Square
Indianapolis, IN 46282
Counsel for
St. Mary's Warrick Hospital

DATED: 12-15-03 BY: Frank Tideman

St. Mary's Warrick Hospital

RELATOR BARRY STEELEY

DATED: 12/22/03

Barry Steeley
BARRY STEELEY

DATED: 12-22-03

BY: W. Charles Bailey Jr.
W. CHARLES BAILEY, JR.
Simms Showers LLP.
Twenty South Charles Street
Baltimore, Maryland 21201
Counsel for Relator
Barry Steeley