

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, 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”) (collectively “the United States”); Yavapai Community Hospital Association, d/b/a Yavapai Regional Medical Center (“YRMC”); and Gregory Kuzma (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. YRMC is an Arizona not-for-profit community health system that was incorporated in 1942, with its principal place of business located at 1003 Willow Creek Road, Prescott, Arizona 86301. YRMC operates two acute care hospitals, a network of primary and specialty care clinics, outpatient health and wellness centers, cardiac diagnostic centers, and outpatient medical imaging centers.

B. On April 12, 2016, Mr. Kuzma filed a *qui tam* action in the United States District Court for the District of Arizona captioned *United States ex rel. Kuzma v. Yavapai Regional Medical Center*, No. CV-16-08072-PCT-JAT, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“the Civil Action”). Relator alleges that YRMC understated wage index data on its cost reports for reporting years 2007, 2008, and 2009, resulting in Medicare overpayments to YRMC. The United States intervened in the Civil Action on September 12, 2016.

C. The United States contends that YRMC submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”).

D. The United States contends that it has certain civil claims against YRMC arising from YRMC's knowing and material misstatement to the Centers for Medicare and Medicaid Services ("CMS") of wage index data on YRMC's cost reports for reporting years 2006, 2007, 2008, and 2009. That conduct is referred to below as the "Covered Conduct."

E. YRMC expressly denies the allegations in Paragraphs B, C, and D and in the Civil Action. This Settlement Agreement is neither an admission of liability by YRMC nor a concession by the United States that its claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. YRMC shall pay to the United States \$5,850,000 ("the Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Arizona no later than 20 days after the later of the Effective Date of this Agreement or the date on which YRMC receives written instructions from the United States Attorney's Office for the District of Arizona.

2. Conditioned upon the United States receiving the Settlement Amount from YRMC and as soon as feasible after receipt, the United States shall pay \$1,170,000 to Relator by electronic funds transfer.

3. YRMC shall pay to Relator \$150,000 as full and complete payment of Relator's attorneys' fees, costs, and expenses pursuant to 31 U.S.C. § 3730(d) incurred in connection with the Civil Action. Payment shall be made via electronic transfer to a trust account for Relator,

through his counsel, in accordance with written instructions to be provided by his counsel no later than 20 days after the later of the Effective Date of this Agreement or the date on which YRMC receives written instructions from Relator's counsel.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims), and conditioned upon YRMC's full payment of the Settlement Amount, the United States releases YRMC, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct 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, and fraud.

5. Subject to the exceptions in Paragraph 6, and conditioned upon YRMC's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases YRMC and its current and former employees, successors, officers, directors, attorneys, agents, subsidiaries, affiliates, and divisions from any claims, losses, demands, causes of action, obligations, damages, fees, liens, judgments, and liabilities of any kind, whether in law or equity, fixed or contingent, presently known or unknown, suspected or unsuspected, contingent or non-contingent (including but not limited to attorneys' fees, costs, and expenses of every kind and however denominated), that the Relator has or may have in the future in Relator's individual and/or collective capacities on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733, or otherwise arising from or related to (1) the Covered Conduct or (2) the conduct by YRMC, its current and former

employees, successors, officers, directors, attorneys, agents, subsidiaries, affiliates, and divisions alleged in, or learned from, the Civil Action.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or 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 liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and

assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730 and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases YRMC and its current and former employees, successors, officers, directors, attorneys, agents, subsidiaries, affiliates, and divisions from any liability to Relator arising from the filing of the Civil Action or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

9. YRMC waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that 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. 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.

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

11. YRMC fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that YRMC has

asserted, could have asserted, or may assert in the future against Relator related to the Civil Action and Relator's investigation and prosecution thereof.

12. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier, or any State payer related to the Covered Conduct). YRMC agrees not to resubmit to any Medicare contractor or any State payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

13. YRMC agrees to the following:

a. Unallowable Costs Defined: 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of YRMC, 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 civil investigation(s) of the matters covered by this Agreement;
- (3) YRMC'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; and

- (5) the payment YRMC makes to the United States pursuant to this Agreement and any payments that YRMC may make to Relator, including costs and attorney's fees,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP") (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by YRMC, and YRMC 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 YRMC or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

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

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine YRMC's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. YRMC agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, YRMC shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. YRMC further agrees to use best efforts to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf. YRMC's obligations pursuant to this paragraph 14 as to the provision of documents, reports, memoranda, and records shall terminate upon the sixth anniversary of the Effective Date of this Agreement.

15. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 16 (waiver for beneficiaries paragraph).

16. YRMC agrees that it 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 payors based upon the claims defined as Covered Conduct.

17. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Federal Rule of Civil Procedure 41(a)(1) proposing that the Civil Action be dismissed with prejudice subject to the terms of the settlement.

18. Except as provided in Paragraph 3, the Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. The Parties represent that they freely and voluntarily enter this Agreement without any degree of duress or compulsion.

20. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Arizona. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

22. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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 YRMC's successors, transferees, heirs, and assigns.

25. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

26. The Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

27. This Agreement is effective on the date of signature of the last signatory to the Agreement ("the Effective Date of this Agreement"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 9/29/16

BY: Diana K. Cieslak
DIANA K. CIESLAK
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____
LON R. LEAVITT
Assistant United States Attorney
District of Arizona

DATED: _____

BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
DIANA K. CIESLAK
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 10/3/16

BY: 
LON R. LEAVITT
Assistant United States Attorney
District of Arizona

DATED: _____

BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

DIANA K. CIESLAK
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____

LON R. LEAVITT
Assistant United States Attorney
District of Arizona

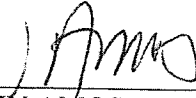
DATED: 9/30/16

BY: Robert K. DeConti

ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

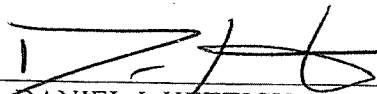
YAVAPAI COMMUNITY HOSPITAL ASSOCIATION,
D/B/A AS YAVAPAI REGIONAL MEDICAL CENTER

DATED: 9/29/16

BY: 

JOHN AMOS
Chief Executive Officer

DATED: 9/29/16

BY: 

DANIEL J. HETTICH
King & Spalding
Counsel for Yavapai Regional Medical Center

GREGORY KUZMA

DATED: 10/3/2016

BY: Gregory Kuzma

GREGORY KUZMA
Relator

DATED: _____

BY: _____

DAVID J. CAPUTO
DAVID C. WILLIAMS
Kline & Specter, P.C.
Counsel for Relator Gregory Kuzma

DATED: _____

BY: _____

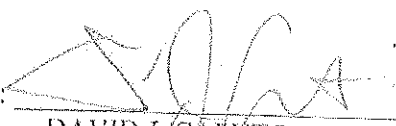
JOSEPH TRAUTWEIN
Joseph Trautwein & Associates, LLC
Counsel for Relator Gregory Kuzma

GREGORY KUZMA

DATED: _____

BY: _____
GREGORY KUZMA
Relator

DATED: 10/3/16

BY: 

DAVID J. CARUTO
DAVID C. WILLIAMS
Kline & Specter, P.C.
Counsel for Relator Gregory Kuzma

DATED: 10/3/20/16

BY: 

JOSEPH TRAUTWEIN
Joseph Trautwein & Associates, LLC
Counsel for Relator Gregory Kuzma