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"), Cardinal Health, Inc. ("Cardinal Health"), and Omni Healthcare, Inc., John Crowley, Jeffrey Lovesy, and Michael Mullen (collectively, the "Relators") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Cardinal Health is a corporation based in Ohio and headquartered at 7000 Cardinal Place, Dublin, Ohio. Cardinal Health, among other things, is a wholesaler of pharmaceutical products. Through its Specialty Pharmaceutical Distribution subsidiary, Cardinal Health 108, LLC, Cardinal Health distributes specialty pharmaceuticals to, as relevant here, hospitals and physician practices.

B. On October 2, 2018, Omni Healthcare, Inc. ("Omni"), filed a *qui tam* action in the United States District Court for the District of Massachusetts captioned *United States et al. ex rel. Omni Healthcare, Inc. v. Cardinal Health, Inc., et al.*, No. 18-cv-12039, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "*Omni* Civil Action"). Omni filed an amended complaint on August 21, 2020.

C. On December 10, 2019, John Crowley, Jeffrey Lovesy, and Michael Mullen filed a *qui tam* action in the United States District Court for the District of Massachusetts captioned United States ex rel. Jeffrey Lovesy, Michael Mullen, and John Crowley v. Cardinal Health, Inc., No. 19-cv-12488, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Lovesy Civil Action") (together with the Omni Civil Action, the "Civil Actions"). D. The Relators allege, among other things, that Cardinal Health induced physician practices to purchase specialty pharmaceutical products from Cardinal Health rather than from competing pharmaceutical distributors by paying its physician practice customers remuneration *in advance* of the practice making any drug purchases, and not yet in connection with specific purchases, in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (the "AKS").

E. The United States contends that Cardinal Health caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395III ("Medicare"), and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 ("Medicaid"). Physician practices seek reimbursement from Medicare Part B and from state Medicaid programs for specialty pharmaceutical drugs, like those purchased from Cardinal Health, that their physicians administer to patients.

F. The United States contends that it has certain civil claims against Cardinal Health arising from Cardinal Health's upfront payments, often characterized as upfront discounts, upfront rebates, or transition rebates, including payments to various Physician Practices, as defined in the attached Exhibit A, during the period from February 1, 2013, through January 15, 2022. Specifically, the United States contends that Cardinal Health paid the Physician Practices in advance of the Physician Practices' purchase of pharmaceuticals from Cardinal Health, and that these payments either were not attributable to identifiable sales of pharmaceutical products or were purported rebates that the customers had not actually earned. The United States contends that the purpose of these upfront payments was to induce the Physician Practices to purchase pharmaceuticals paid for by federal health care programs from Cardinal Health, instead of from Cardinal Health's competitors, in violation of the AKS. The foregoing conduct is hereinafter referred to as the "Covered Conduct."

2

As a result of the foregoing conduct, the United States contends that Cardinal Health caused false claims to be submitted to Medicare.

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

H. Cardinal Health has entered into separate settlement agreements described in Paragraph 1.b below (the "Medicaid State Settlement Agreements"), with the states (the "Medicaid Participating States") in settlement of the conduct released in those separate Medicaid State Settlement Agreements.

I. Cardinal Health acknowledges the facts underlying the Covered Conduct and agrees not to make any public statement denying or contesting those facts. Nothing in this paragraph, however, affects Cardinal Health's: (i) testimonial obligations; or (ii) right to take legal or factual positions, or make arguments, in litigation or other legal proceedings in which the United States is not a party—including positions and arguments contrary to those of the United States in this matter.

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Cardinal Health shall pay to the United States and the Medicaid Participating States collectively a total of Thirteen Million One Hundred Twenty-Five Thousand Dollars (\$13,125,000) and interest accruing at an annual rate of 0.875% from December 22, 2020, and continuing until and including the day of payment (collectively, the "Settlement Amount"), of which \$8,750,000 is restitution. No later than thirty (30) days after the Effective Date of this Agreement, Cardinal Health shall pay the Settlement Amount as follows:

3

- a. The sum of Twelve Million Three Hundred Thirty-Seven Five Hundred Dollars (\$12,337,500) plus accrued interest as set forth above (the "Federal Settlement Amount") to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Massachusetts; and
- b. The sum of Seven Hundred Eighty-Seven Thousand Five Hundred Dollars (\$787,500, plus accrued interest as set forth above (the "Medicaid State Settlement Amount") to the Medicaid Participating States pursuant to the terms of the Medicaid State Settlement Agreements that Cardinal Health has entered into with the Medicaid Participating States.

2. Conditioned upon the United States receiving the Federal Settlement Amount, and as soon as feasible after receipt, the United States shall pay \$2,467,500 to Omni by electronic funds transfer, plus 20 percent of any interest paid by Cardinal Health as part of the Federal Settlement Amount pursuant to written instructions to be provided by counsel for Omni. Omni will then pay the Relators in the *Lovesy* Civil Action their share of the Federal Settlement Amount pursuant to written instructions to be provided by counsel for the Lovesy Civil Action (the *"Lovesy* Relators").

- 3. Cardinal Health agrees to pay:
 - a. \$625,000 of Omni's attorney's fees and costs incurred in connection with the *Omni* Civil Action to Omni's counsel by electronic funds transfer pursuant to written instructions agreed to by Cardinal Health and Omni's counsel. Cardinal Health agrees to make the electronic funds transfer no later than January 31, 2022. No additional attorney's fees or costs shall be paid by Cardinal Health for claims by Omni as part of the Medicaid State Settlement Agreements.

b. \$306,257.03 of the Lovesy Relators' attorney's fees and costs incurred in connection with the Lovesy Civil Action to the Lovesy Relators' counsel by electronic funds transfer pursuant to written instructions agreed to by Cardinal Health and the Lovesy Relators' counsel. Cardinal Health agrees to make the electronic funds transfer no later than January 31, 2022. No additional attorney's fees or costs shall be paid by Cardinal Health for claims by the Lovesy Relators as part of the Medicaid State Settlement Agreements.

4. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and upon the United States' receipt of the Federal Settlement Amount, the United States fully and finally releases Cardinal Health, its predecessors, its current and former parents, divisions, subsidiaries, successors, and assigns from any and all civil or administrative monetary claims the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-12, or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Upon the United States' receipt of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, fully and finally release Cardinal Health, its predecessors, its current and former affiliates, parents, divisions, subsidiaries, successors, assigns, directors, officers, and employees from any and all claims and potential claims, including but not limited to all claims included in the *qui tam* complaints filed in the Civil Actions, any other claims Relators have on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733, any employment claims, and any common law claims, with the express exception of any potential claims concerning conduct that post-dates the Effective Date of this Agreement.

6. In consideration of the obligations of Cardinal Health in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and Cardinal Health 108, LLC, and upon the United States' receipt of full payment of the Settlement Amount, plus interest due under Paragraph 1, the OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Cardinal Health 108, LLC 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 and in Paragraph 7 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Cardinal Health 108, LLC or Cardinal Health from Medicare, Medicaid, and 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 claims have been reserved in Paragraph 7, below.

7. Notwithstanding the releases given in Paragraphs 4 and 6 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released with respect to Cardinal Health:

- 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 or enforcement right, 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.

8. Relators and their 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 Omni's receipt of the payment described in Paragraph 2, Relators and their 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 Actions against Cardinal Health or under 31-U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Actions against Cardinal Health.

9. Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, fully and finally release Cardinal Health, its predecessors, its current and former affiliates, parents, divisions, subsidiaries, successors, assigns, directors, officers, and employees from any liability to Relators arising from the filing of the Civil Actions, including but not limited to liability for attorneys' fees, costs, and expenses of any kind and however denominated, with the express exception of the fees and costs agreed to in Paragraph 3. Omni, for itself, and for its heirs, successors, attorneys, agents, and assigns, also fully and finally releases Cardinal Health, its predecessors, its current and former affiliates, parents, divisions, subsidiaries, successors, assigns,

directors, officers, and employees from any liability relating to Cardinal Health's forgiveness of all but \$25,000 of the outstanding invoice amounts Cardinal Health claims Omni owes as of the Effective Date of this Agreement.

10. Cardinal Health fully and finally releases the Relators from any claims (including for attorneys' fees, costs, and expenses of every kind and however denominated) that Cardinal Health has asserted, could have asserted, or may assert in the future against the Relators, related to the Civil Actions and the Relators' investigation and prosecution thereof. Cardinal Health also fully and finally releases Omni from any claims relating to all but \$25,000 of the outstanding invoice amounts Cardinal Health claims Omni owes as of the Effective Date of this Agreement.

11. 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; and Cardinal Health 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.

12. Cardinal Health agrees to the following:

a. <u>Unallowable Costs Defined</u>: 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. §§ 1395-1395III and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Cardinal Health, 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) Cardinal Health'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 attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Cardinal Health makes to the United States pursuant to this Agreement and any payments that Cardinal Health may make to Relator, including costs and attorney's fees; 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,

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). However, nothing in paragraph 12.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Cardinal Health.

b. <u>Future Treatment of Unallowable Costs</u>: Unallowable Costs shall be separately determined and accounted for by Cardinal Health, and Cardinal Health 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 Cardinal Health or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs. c. Treatment of Unallowable Costs Previously Submitted for Payment: Cardinal Health 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 Cardinal Health 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. Cardinal Health agrees that the United States, at a minimum, shall be entitled to recoup from Cardinal Health 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 Cardinal Health or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Cardinal Health 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 Cardinal Health's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. Cardinal Health agrees to cooperate fully and truthfully with the United States' investigation of entities not released in this Agreement and not affiliated with Cardinal Health.

Upon reasonable notice, Cardinal Health 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.

14. 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 15 (waiver for beneficiaries paragraph), below.

15. Cardinal Health 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.

16. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Actions a Joint Stipulation of Dismissal of the Civil Actions against Cardinal Health pursuant to Rule 41(a)(1) dismissing with prejudice the claims as to Cardinal Health in the Civil Actions released in this Settlement Agreement, and without prejudice to the United States as to any other claims against Cardinal Health in the Civil Actions.

17. Except as otherwise provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

19. 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 Massachusetts. 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.

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

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

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 Cardinal Health's successors, transferees, heirs, and assigns.

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

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

26. This Agreement is effective on the date of signature of the last signatory to the Agreement (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:

(Digitally signed by EVAN PANICH Date: 2022.01.21 10:58:45 -05'00'

_____ BY:

EVAN PANICH LINDSEY ROSS Assistant United States Attorneys United States Attorney's Office District of Massachusetts

DATED: 1/21 ZOZZBY:

AisaM. Re

LISA M. RE 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

CARDINAL HEALTH, INC.

DATED: 01-18-22

BY:

BY:

JESSICA L. MAYER Chief Legal and Compliance Officer Cardinal Health, Inc.

DATED: _____1-18-22

enthe in

STEPHEN G. SOZIO RYAN M. DISANTIS Counsel for Cardinal Health, Inc.

OMNI HEALTHCARE, INC. - RELATOR

BY-

BY:

DATED: 1/12/22

MARK BOBANGO Chief Financial Officer Omni Healthcare, Inc. 17P

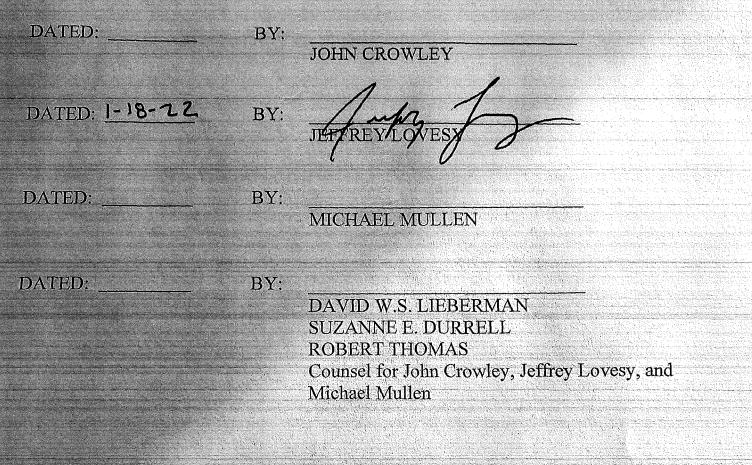
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1/18/22 DATED:

Demon DAVID A. KOENIGSBERG

TRACY N. LEROY Counsel for Omni Healthcare, Inc.

DATED: 1/18/22	BY: JOHN CROWLEY
DATED:	BY:
DATED:	BY: MICHAEL MULLEN
DATED:	BY: DAVID W.S. LIEBERMAN SUZANNE E. DURRELL
· ····	ROBERT THOMAS Counsel for John Crowley, Jeffrey Lovesy, and Michael Mullen



14

DATED: BY: JOHN CROWLEY BY: DATED: JE FREY LO ESY DATED: 1 BY: Mic DATED: BY: DAVID W.S. LIEBERMAN SUZANNE E. DURRELL **ROBERT THOMAS** Counsel for John Crowley, Jeffrey Lovesy, and Michael Mullen

DATED:	BY:	JOHN CROWLEY	
DATED:	BY:	JEFFREY LOVESY	
DATED:	BY:	MICHAEL MULLEN	
DATED: <u>1/18/2022</u>	BY:	DAVID W.S. LIEBERMAN SUZANNE E. DURRELL ROBERT THOMAS Counsel for John Crowley, Jeffrey Lovesy, and Michael Mullen	• • • • • • • • • • • • • • • • • • •

EXHIBIT A

"Physician Practices", as used in the Settlement Agreement, means:

- 1. Birmingham Hematology & Oncology Associates, Mountain Brook, Alabama
- 2. California Cancer Associates for Research & Excellence, Fresno, California
- 3. Cancer and Blood Specialists of Nevada, Henderson, Nevada
- 4. Cancer Care Northwest Centers, P.S., Spokane Valley, Washington
- 5. Cancer Center Associates of Carolina, Aiken, South Carolina
- 6. Cancer Health Treatment Centers, P.C., Crown Point, Indiana
- 7. Clearview Cancer Institute, P.A., Huntsville, Alabama
- 8. Dayton Physicians, LLC, Dayton, Ohio
- 9. Dean Retail Services, Inc., Madison, Wisconsin
- 10. Eastern Connecticut Hematology Oncology Associates, P.C., Norwich, Connecticut
- 11. Franciscan Alliance, Inc., Mishawaka, Indiana
- 12. Green Bay Oncology Ltd., Green Bay, Wisconsin
- 13. Hawaii Oncology, Inc., Honolulu, Hawaii
- 14. Health First Medical Group, Melbourne, Florida
- 15. Healthcare Partners of Nevada, Las Vegas, Nevada
- 16. Hematology and Oncology Associates of Rhode Island, Inc., Cranston, Rhode Island
- 17. Hematology and Oncology Care, Davenport, Iowa
- 18. Hematology Oncology Clinic, Baton Rouge, Louisiana
- 19. Hematology Oncology Center, Inc., Elyria, Ohio
- 20. Illinois CancerCare, Peoria, Illinois
- 21. Iowa Cancer Specialists, P.C., Davenport, Iowa
- 22. Michigan Healthcare Professionals, O.C., Royal Oak, Michigan
- 23. Mid-Ohio Oncology and Hematology, Inc., Columbus, Ohio
- 24. New Mexico Oncology Hematology Consultants, Ltd., Albuquerque, New Mexico
- 25. Northwest Medical Specialties, Tacoma, Washington
- 26. Northwest Oncology, P.C., Munster, Indiana
- 27. Omni Healthcare, Inc., Melbourne, Florida
- 28. Park Slope Medicine, P.C., Brooklyn, New York
- 29. Premier Healthcare, LLC, Bloomington, Indiana
- 30. Progressive Care, S.C., Chicago, Illinois
- 31. Pronger Smith Medical Care, LLP, Tinley Park, Illinois
- 32. Providence Cancer Center, Seattle, Washington
- 33. Rockwood Clinic, P.S., Spokane, Washington
- 34. South Carolina Oncology Associates, P.A., Columbia, South Carolina
- 35. Southeast Florida Hematology-Oncology Group, P.A., Fort Lauderdale, Florida
- 36. Tennessee Cancer Specialists, PLLC, Knoxville, Tennessee
- 37. Tennessee Oncology, Nashville, Tennessee
- 38. University Cancer Institute, LLC, Boynton Beach, Florida