SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this 30th day of October 1997, by and between the United States of America, through the United States Attorney for the Eastern District of Pennsylvania, the United States Department of Justice, and the Office of Inspector General ("OIG") of the United States Department of Health and Human Services (collectively, "the United States"), and Crozer-Chester Medical Center (successor to Springfield Hospital) ("Hospital").

PREAMBLE

A. The Medicare program, Title XVIII of the Social Security Act, 42 U.S.C. § 1395, et seq., is administered by the United States Department of Health and Human Services ("HHS").

B. Medicare payments to a hospital for inpatient treatment rendered to a Medicare beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by the hospital. The Medicare program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.[1]

C. Hospital is a Medicare provider, and submitted claims to Medicare for the inpatient treatment of Medicare beneficiaries.

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

D. The United States conducted an investigation into inpatient payment claims submitted to Medicare by Hospital with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria"), which claims were submitted by Hospital during the period October 1, 1992 to March 17, 1997. The United States alleges that Hospital violated the False Claims Act, 31 U.S.C. § 3729, et seq., during this period by submitting to Medicare, with the 482.89 principal diagnosis code, claims that were not supported by the corresponding medical records ("the covered matter"). The United States alleges that, as a result of these claims, Hospital received payments to which it was not entitled.

E. Hospital denies any wrongdoing or liability in connection with its use of the 482.89 principal diagnosis code.

F. Hospital has provided documents and information to the United States in response to the government's investigation of the covered matter, including patient files for which claims were submitted to Medicare with the principal diagnosis code of 482.89, and Hospital represents that such response has been truthful, accurate, and complete.

G. The United States and Hospital ("the Parties") mutually desire to settle, compromise, and resolve the issues and disputes between them arising out of the covered matter in order to avoid the delay, inconvenience, uncertainty, and expense of litigation.

H. The Parties agree that this Agreement, and all information and documents voluntarily provided to the other party

in connection with the settlement of the covered matter, do not constitute admissions by any person or entity, and shall not be construed as admissions by any person or entity in any proceeding (including, but not limited to, any criminal proceeding), with respect to any issue of fact or law pertaining to the covered matter.

TERMS AND CONDITIONS

In reliance upon the representations contained herein, and in consideration of the mutual promises, covenants, and obligations herein, and for good and valuable consideration mutually presented and received, and with full authority to enter into this Agreement and to be bound thereby, and incorporating the foregoing recitals, the United States and Hospital agree as follows:

1. Hospital agrees to pay to the United States the sum of $664,503.96 ("the Settlement Amount"). Of this amount, $54,981.15 has been paid by Hospital, leaving a balance of $609,522.81 due and owing. Immediately upon the execution of this Agreement and the receipt of instructions from the undersigned Assistant United States Attorney, Hospital shall pay $609,522.81 by electronic funds transfer to the United States of America pursuant to those instructions. If this transfer is not timely made, then the United States at its sole option may declare Hospital to be in default under this Agreement, and exercise one or more of the following rights: (1) declare this

Agreement breached and proceed against Hospital with respect to the covered matter in United States District Court, under the False Claims Act and otherwise; (2) file an action for specific performance of the terms of this Agreement; (3) exclude Hospital from participation in the Medicare program and State health care programs (as defined in 42 U.S.C. § 1320a-7(h)); (4) satisfy Hospital's debt to the United States for the Settlement Amount by an offset of monies payable to Hospital by any department, agency, or agent of the United States; and (5) exercise any other right granted by law, or recognizable at common law or in equity.

2. Hospital agrees to cooperate fully and in good faith with the United States in the civil or criminal prosecution of any person concerning the covered matter, 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. Nothing in this Paragraph, however, affects any privilege that might be available to Hospital or any statutory or regulatory obligation of Hospital, or Hospital's ability to object to the request on the grounds of such privilege or obligation; the United States reserves its right to contest the assertion of any such privilege or obligation by Hospital. Hospital agrees to the following specific representations and undertakings:

a. Hospital will use its best efforts to provide such information, and related documents, within ten (10) working

days of receipt of a request. If necessary, Hospital will notify the United States of any difficulty in timely complying with any such request, and will advise the United States of the additional amount of time estimated to be needed to respond to such request.

b. Hospital understands that it has undertaken an obligation to provide truthful and accurate information and testimony by itself and through its employees. Hospital agrees that it shall take no action which 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.

c. Hospital shall, within the bounds of the law and subject to its right to assert a privilege or statutory or regulatory obligation as set forth above, encourage its employees and members of its medical staff to cooperate in the government's investigation, to make themselves available for interviews and testimony, and to provide requested records.

d. Should it be judged by the United States that Hospital has failed to cooperate fully or has intentionally given false, misleading, or incomplete information or testimony, or has otherwise violated any provision of this Agreement, Hospital thereafter shall be subject to prosecution for any criminal violation of which the United States has knowledge, including, but not limited to, perjury, obstruction of justice, and false

statements.

3. Corporate Integrity Program. For a three year period commencing with the execution of this Agreement, Hospital agrees to take the following steps with the goal of ensuring accurate claims to Medicare for inpatient treatment, particularly for the treatment of pneumonia patients.

a. Compliance Officer. Hospital shall employ a Compliance Officer, who shall be responsible for developing, implementing, and certifying compliance with the requirements in this paragraph, and with the requirements for reimbursement by Medicare, Medicaid, and other Federal health care programs. The Compliance Officer shall be a member of senior management of Hospital and shall be authorized to make reports regarding compliance matters directly to the Hospital CEO or to the Board of Directors of Hospital.

b. Policies and Procedures. Within 120 days after the execution of this Agreement (except as otherwise provided in this paragraph), Hospital shall develop and effectively implement written policies and procedures regarding compliance with the terms of this paragraph, with all Federal and State health care statutes, regulations, policies, and procedures, and with the requirements of Medicare, Medicaid, and other Federal health care programs for the provision, documentation, and billing for inpatient hospital services. The policies and procedures specifically shall require that all diagnosis codes submitted to Medicare for claims purposes

properly are supported by physician documentation in the patient's medical record. The policies and procedures shall include disciplinary guidelines and methods for employees to make complaints and notifications about compliance issues to Hospital management. The policies and procedures shall be distributed by Hospital individually to each person affected by them, including but not limited to all personnel with responsibilities pertaining to coding. Within 120 days after the execution of this Agreement, all persons involved in the assignment of diagnosis and procedure codes for billing Medicare shall certify that they have read and understand the policies and procedures. Within 180 days after the execution of this Agreement, all other persons affected by the policies and procedures shall certify that they have read and understand the policies and procedures. For new employees, Hospital shall have the longer of 90 days from the beginning of their employment, or the time otherwise applicable pursuant to the foregoing, to comply with these certification requirements. Hospital shall keep a copy of these certifications on file. The policies and procedures shall contain guidance for physicians regarding their responsibilities as to documentation and coding, and that portion of the policies and procedures shall be distributed individually to each physician. Hospital shall provide a copy of the policies and procedures to the Office of Counsel to the Inspector General ("OCIG") at:

Office of Counsel to the Inspector General
Office of Inspector General
Department of Health and Human Services
330 Independence Ave., SW, Room 5527
Washington, D.C. 20201

c. Training and Education. Within 120 days after execution of this Agreement and annually thereafter, Hospital shall require and provide at least 5 hours of training for each and every person involved in the assignment of diagnosis and procedure codes for billing Medicare. Within 180 days after the execution of this Agreement and annually thereafter, Hospital shall require and provide at least 1 hour of training to each and every other employee of the hospital with any responsibility for the provision, documentation, or billing of inpatient hospital services. For new employees, Hospital shall have the longer of 90 days from the beginning of their employment, or the time otherwise applicable pursuant to the foregoing, to comply with these training requirements. The training shall cover Hospital's compliance policies and procedures, shall reinforce the need for strict compliance with the law and Hospital's policies, and shall advise employees that any failure to comply may result in disciplinary action. Hospital shall make such training available to staff physicians, and use its best efforts to encourage their attendance and participation.

d. Audits and Reviews. Hospital shall perform, or retain a third-party to perform, annual audits (consistent with Office of Audit Services Audit Policies and Procedures, Chapter 20-02, Transmittal 96:04, 8/5/96) designed to ensure

compliance with the written policies and procedures, with this Agreement, and with all applicable federal and state laws and requirements. Such audits shall focus particular attention on coding and the activities of physicians and personnel involved in the coding of diagnoses for Medicare billing. The audits must be retained by Hospital for a least one year after the completion of the compliance period mandated by this paragraph. For every audit performed pursuant to the requirements of this paragraph, Hospital shall submit a written audit plan to OCIG for review prior to the initiation of the audit. All inpatient claims intended to be submitted to Medicare with a 482.89 principal diagnosis code first shall be subject to pre-billing review to ensure that the 482.89 code properly was assigned. Written audit reports for all of the audits performed pursuant to this paragraph shall be included in the annual reports required by subparagraph (e). Hospital agrees to take any necessary corrective actions identified during such audits and reviews, including remitting all overpayments (with interest) to the appropriate payor. If overpayments are identified, then Hospital shall provide its methodology for determining the overpayments and a list of the claims involved. In the event that HHS reasonably determines that it is necessary to conduct an independent audit or review to determine whether or the extent to which Hospital is complying with its obligations under this Agreement, Hospital agrees to pay for the reasonable cost of any such audit or review.

e. Annual Reports. Within 120 days after the execution of this Agreement, Hospital shall report in writing to the OCIG with respect to the steps taken to implement the requirements of this paragraph. Thereafter, Hospital shall report in writing to the OCIG annually on the first, second, and third anniversary dates of this Agreement, with respect to the status and findings of Hospital's compliance activities. The annual reports will include any problems identified in audits and the corrective actions taken to address the problems. Hospital shall submit, as part of each Annual Report, a certification by the Compliance Officer verifying that Hospital is in compliance with all of the requirements of this paragraph.

f. Excluded Individuals. Hospital agrees that it shall not employ, contract with, or otherwise use the services of any individual who Hospital knows or should have known, after reasonable inquiry, (a) has been convicted of a criminal offense related to health care, or (b) is currently listed by a federal agency as debarred, excluded, or otherwise ineligible for participation in federally funded health care programs. In furtherance of this requirement, Hospital agrees to make reasonable inquiry as to any individual who is a prospective employee, agent, or individual considered for engagement directly by Hospital as an independent contractor by reviewing the General Services Administration's List of Parties Excluded from Federal Programs and HHS/OIG Cumulative Sanction Report. Hospital shall notify HHS of each personnel action taken pursuant to the

requirements of this subparagraph, and the reasons therefore, within thirty (30) days of the action.

4. Hospital releases the United States, HHS, and each of their agencies, officers, agents, employees, and contractors and their employees from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the covered matter, including the investigation of the covered matter and this Agreement.

5. In consideration of the payment, representations, and undertakings described above, and except as provided below:

a. The United States will release Hospital, including its current and former directors, officers, and employees (collectively the "Released Parties") from all civil or administrative monetary claims that it may have against the Released Parties pursuant to the False Claims Act (31 U.S.C. § 3729, et seq.), the Program Fraud Civil Remedies Act (31 U.S.C. § 3801, et seq.), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), and common law for the covered matter.

b. The United States will refrain from instituting or maintaining any administrative claim or action seeking Hospital's exclusion from the Medicare program or State health care programs against the Released Parties under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b) (permissive exclusion) with respect to the covered matter, except under the circumstances set forth in this Agreement.

(i) A breach by Hospital of any of its

obligations under this Agreement constitutes an independent basis for exclusion.

(ii) In the event that OIG believes that Hospital has breached one or more of its obligations under this Agreement, OIG shall notify Hospital of the alleged breach by certified mail, specifying the nature and extent of the alleged breach. Hospital will have thirty (30) days from receipt of the notice to: (a) cure the breach; or (b) otherwise satisfy the government that (1) it is in full compliance with this Agreement or (2) the breach cannot reasonably be cured within 30 days, but that Hospital has taken action to cure the breach and is pursuing such action with diligence.

(iii) If, at the end of the thirty-day period described above, OIG determines that Hospital continues to be in breach of one or more of its obligations under this Agreement, and that Hospital is not taking appropriate action to cure such breach, OIG may declare Hospital to be in default and initiate proceedings to suspend or exclude Hospital from participation in the Title XVIII (Medicare) program, the Title XIX (Medicaid) program, and other Federal health care programs, as well as all procurement and non-procurement programs. The document by which OIG may declare Hospital to be in default and notify Hospital of OIG's intention to exclude shall be referred to hereafter as the "Notice of Intention to Exclude Letter."

(iv) Upon receipt by Hospital of OIG's Notice of Intention to Exclude Letter, Hospital shall be entitled to the

due process afforded a provider under 42 U.S.C. § 1320a-7(f). Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a breach of this Agreement shall be: (1) whether Hospital was in breach of one or more of its obligations under this Agreement, at the time of and as specified in the Notice of Intention to Exclude Letter; and (2) whether Hospital failed to cure the breach or otherwise satisfy OIG within 30 days after receiving notice thereof from OIG. Subsequent to a final decision to exclude or suspend Hospital, Hospital shall have the right to seek reinstatement at any time pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004. Nothing in this Agreement shall prevent the United States from excluding Hospital, consistent with its normal procedures and the legal rights of Hospital, for actions taken by Hospital that are not specifically covered by this Agreement.

c. The United States will move to dismiss the claims against Hospital in the action under seal in the United States District Court for the Eastern District of Pennsylvania at Civil Action No. 96-1552, which claims are deemed coextensive with the covered matter.

6. This Agreement, and the scope of the government's releases herein, specifically are limited to the covered matter as defined in Paragraph D. The United States specifically reserves any claims it may have with respect to quality of care, services, or products.

7. This Agreement does not preclude any investigation or prosecution for any violations of federal criminal laws. Hospital agrees that it will waive and will not assert any defense based in whole or in part on the double jeopardy clause of the United States Constitution, or the decision of the U.S. Supreme Court in United States v. Halper, 490 U.S. 435 (1989), in any criminal prosecution arising out of the covered matter, and agrees that the Settlement Amount is not punitive in nature or effect for purposes of any such criminal prosecution.

8. This Agreement does not settle or release claims, if any, arising under federal tax laws or antitrust laws. Nothing in this Agreement constitutes an agreement by the United States as to the characterization of the Settlement Amount for tax purposes.

9. It is recognized that, for purposes of the Bankruptcy Act, 11 U.S.C. §501, et seq., the amounts due under this Agreement are not dischargeable.

10. Hospital agrees to treat as unallowable for all Medicare, Medicaid, and federal government contracting and grant accounting purposes, all costs (as defined in the Federal Acquisition Regulations ("FAR"), 48 C.F.R. § 31.205-47(a)), incurred by or on behalf of Hospital and/or its current or former officers, directors, shareholders, employees, parents, subsidiaries, divisions, predecessors, successors, and agents in connection with:

a. the matters covered by this Agreement;

b. the government's audit and investigation of the matters covered by this Agreement;

c. Hospital's investigation, audit, and defense of the matters covered by this Agreement and corrective actions undertaken in response to the government's investigation;

d. the negotiation of this Agreement; and

e. all payments and costs incurred pursuant to this Agreement, specifically including attorney's fees.

Hospital shall separately estimate and account for these amounts, and Hospital shall not charge such amounts directly or indirectly to any contract with the United States, or to any grant from the United States, or to any cost report submitted to the Medicare or Medicaid programs.

11. The Settlement Amount to be paid by Hospital under Paragraph 1 shall not be offset by any claims for payment now being withheld from payment by any Medicare or Medicaid carrier or intermediary; and Hospital agrees not to resubmit any claims to a Medicare or Medicaid carrier or intermediary that have been denied as of the date of this Agreement, and agrees not to appeal such denials of claims, where such denial resulted from the practices described in Paragraph D.

12. Each party shall bear its own costs, including attorney's fees.

13. The Agreement represents the entire understanding between the United States and Hospital. Any modification to this Agreement must be in writing and must be signed and executed by

all parties to this Agreement.

14. This Agreement is binding upon and shall inure to the benefit of the Parties and their successors, assigns, heirs, agents, trustees, and employees. The Agreement shall become final, binding, and effective only upon signing by every party hereto.

15. The Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

16. Each person who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so.

FOR THE UNITED STATES:

MICHAEL L. LEVY
Acting United States Attorney

James Sheehan/CV

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Chief, Civil Division

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FOR CROZER-CHESTER MEDICAL CENTER:

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Vice President and General Counsel