

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into between the United States of America (“United States”), 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”); and the Texas Health and Human Services Commission (“THHSC”); and Metroplex Hospital (“Hospital”) and Relator, Health Outcomes Technologies (“Relator”) (hereinafter 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. Hospital is a health care provider, and submitted or caused to be submitted, claims to Medicare and Medicaid for the inpatient treatment of Medicare and Medicaid beneficiaries.
- B. The United States contends that Hospital 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. §§ 1395-1395ddd (1997); and the Medicaid Program, 42 U.S.C. §§ 1396-1396v (1997).
- C. Medicare and Medicaid payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary’s “principal diagnosis,” as set forth by the hospital.
- D. The Medicare and Medicaid programs rely upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.
- E. The United States conducted an investigation into inpatient payment claims submitted to Medicare and Medicaid by hospitals 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 Hospital 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 5 below, for engaging in the following alleged conduct during the fiscal years 1993 through 1997 in that Hospital submitted or caused to be submitted claims to Medicare and Medicaid 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, Hospital received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against Hospital under the provisions for permissive exclusion from Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct. The THHSC contends it has certain administrative claims against Hospital under 25 Texas Administrative Code (“TAC”) 79.2101-79.2408 and Texas Human Resources Code § 32.032 for the Covered Conduct.

H. Hospital 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 and Medicaid programs with the principal diagnosis code of 482.89, and Hospital represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. Hospital does not admit and denies and disputes the contentions of the United States as set forth in Paragraphs F and G above.

J. 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. Hospital agrees to pay to the United States \$949,164 (the "Settlement Amount") as follows: Hospital 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 Texas. Hospital agrees to make this electronic funds transfer no later than ⁿ the effective date of this Agreement. Hospital agrees to pay the State of Texas \$34,013, representing recovery for the State's damages to its Medicaid program. JMS

2. Hospital agrees to cooperate fully and in good faith with the United States in the administrative, civil or criminal investigation or prosecution of any person concerning the Covered Conduct, 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. Upon reasonable notice, Hospital will 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 furnish 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. Hospital has entered into a Corporate Integrity Agreement with HHS, attached as

Exhibit A, which is incorporated into this Agreement by reference. Hospital will implement its obligations under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

4. Hospital releases the United States, HHS, and THHSC and each of their agencies, officers, agents, employees, and contractors and their employees from any and all claims, causes of actions, 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.

5. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of Hospital set forth in this Agreement, conditioned upon Hospital'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 4), agrees to release Hospital, its predecessors, successors, assigns, and affiliates 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 Hospital.

Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of Hospital set forth in this Agreement, conditioned upon Hospital's payment in full of the Settlement Amount, the State of Texas (on behalf of itself, its officers, agents, and its agencies and departments) agrees to release Hospital, its predecessors, successors, assigns, and affiliates from any civil or administrative monetary claim the State of Texas has or may have under Texas state statutes, including 25 TAC 79.2101-79.2408 and Texas Human Resources Code §32.032,

and common law causes of action, for the Covered Conduct. The United States expressly reserves any claims against any entities and individuals other than Hospital.

6. In consideration of the obligations of Hospital set forth in this Agreement, conditioned upon Hospital's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain, from instituting, directing or maintaining any administrative claim or any action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Hospital under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in this Paragraph. The OIG HHS expressly reserves all rights to comply with any statutory obligations to exclude Hospital or others from Medicare, Medicaid or other federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion). Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 7, below.

7. 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 Hospital) 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 otherwise 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 Hospital;

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

(8) Any claims against any individuals, including officers and employees. However, if such individuals are legally entitled to repayment from Hospital by claim for indemnification, contribution, reimbursement, or otherwise, as a result of a monetary claim brought by the United States, the release provided in paragraph 5 above shall apply to such individuals with respect to that claim.

8. Hospital waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that are based in whole or in part on a contention that, under the Double Jeopardy or Excessive Fines Clause of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. Hospital agrees that this settlement 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.

9. The Amount that Hospital may pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will 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 Medicaid, related to the Covered Conduct; and Hospital agrees not to resubmit any Medicare

carrier or intermediary or Medicaid any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. Hospital agrees that all costs (as defined in the Federal Acquisition Regulations (“FAR”) § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v (1997), and the regulations promulgated thereunder) incurred by or on behalf of Hospital in connection with: (1) the matters covered by this Agreement, (2) the Government’s audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) Hospital’s investigation, defense, and corrective actions undertaken in response to the Government’s audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees and the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement), (4) the negotiation of this Agreement and the Corporate Integrity Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program, and Federal Employee Health Benefits Program (hereinafter, “unallowable costs”). These unallowable costs will be separately estimated and accounted for by Hospital, and Hospital will not charge such unallowable costs directly or indirectly to any contract 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 Hospital or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

Hospital further agrees that within 60 days of the effective date of this Agreement it will 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 Hospital or any of its subsidiaries, and will 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. Hospital agrees that the United States will be entitled to recoup from Hospital any overpayment 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 Hospital or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on Hospital 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.

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

12. Hospital agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Hospital waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

13. Each party to this Agreement will bear its own legal and other costs incurred in

connection with this matter, including the preparation and performance of this Agreement.

14. Hospital represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

15. 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 will be the United States District Court for the Western District of Texas, except that disputes arising under the Corporate Integrity Agreement (attached as Exhibit A) shall be resolved exclusively under the dispute resolution provisions set forth in the Corporate Integrity Agreement.

16. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the Court that the Parties stipulate and request the Hospital be dismissed with prejudice from the action captioned United States ex rel. Health Outcomes Technologies v. NAMED DEFENDANTS, Civil Action No. 96-1552 (UNDER SEAL), in the United States District Court for the Eastern District of Pennsylvania, the claims against Hospital, subsequently being severed and transferred to the United States District Court for the Western District of Texas, Waco Division under Cause No. W-01-CA-248. (UNDER SEAL).

17. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release Hospital from any claim that Relator, and/or Relator's Counsel may have under 31 U.S.C. § 3730(d) to pay Relator's or Relator's Counsel attorney's fees, expenses and costs.

18. By this Agreement, the Relator and Relator's Counsel will release and will 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 as against Hospital, including any claim pursuant to 31 U.S.C. § 3730 (d) to a share of any settlement proceeds received from Hospital, and in full satisfaction and settlement of claims under this Agreement.

19. This Agreement, including Exhibit A which is incorporated by reference, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Hospital and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement attached as Exhibit A.

20. The undersigned individual signing this Agreement on behalf of Hospital represents and warrants that (s)he is authorized to execute this Agreement on behalf of that entity. The undersigned United States and State of Texas signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

22. This Agreement is binding on successors, transferees, and assigns.

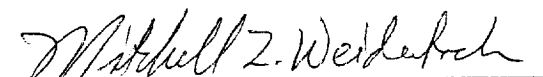
23. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

JOHNNY K. SUTTON
United States Attorney

DATED: Jan 25, 2002

BY:


MITCHELL L. WEIDENBACH
Assistant United States Attorney

Settlement Agreement Between United States, OIG-HHS, THHSC, Metroplex Hospital and Health Outcomes Technologies (continued)

DATED: 1/23/02

BY: J Morris
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of the Inspector General
United States Department of
Health and Human Services

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

DATED: _____

BY: _____
DON GILBERT, Commissioner
Texas Health & Human Services
Commission
P.O. Box 13247
Austin, Texas 78711-3247

DATED: _____

BY: _____
Assistant Attorney General
MEDICAID

METROPLEX HOSPITAL

DATED: _____

BY: _____
Hospital

Settlement Agreement Between United States, OIG-HHS, THHSC, Metroplex Hospital and Health Outcomes Technologies (continued)


DATED: _____

BY: _____

LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of the Inspector General
United States Department of
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BY: _____

LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of the Inspector General
United States Department of
Health and Human Services

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

DATED: _____

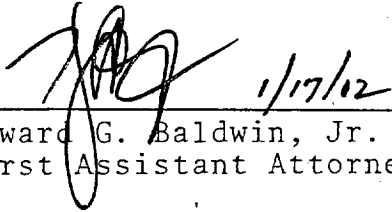
BY: _____

DON GILBERT, Commissioner
Texas Health & Human Services
Commission
P.O. Box 13247
Austin, Texas 78711-3247

TEXAS ATTORNEY GENERAL JOHN CORNYN

DATED: 1-17-02

BY: _____


Howard G. Baldwin, Jr.
First Assistant Attorney General

METROPLEX HOSPITAL

DATED: _____

BY: _____

Hospital

Settlement Agreement Between United States, OIG-HHS, THHSC, Metroplex Hospital and Health Outcomes Technologies (continued)

DATED: _____

BY: _____

LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of the Inspector General
United States Department of
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DATED: _____

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DATED: _____

BY: _____

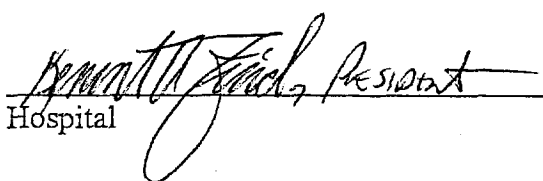
Assistant Attorney General
MEDICAID

METROPLEX HOSPITAL

DATED: 12-20-01


BY: _____

Hospital



Settlement Agreement Between United States, OIG-HHS, THHSC, Metroplex Hospital and Health Outcomes Technologies (continued)

DATED: 12/12/01

BY: 

JEFFERSON M. GRAY
Arent, Fox, Kintner, Plotkin & Kahn, PLLC
Counsel for Metroplex Hospital

HEALTH OUTCOMES TECHNOLOGIES

DATED: _____

BY: _____

DRINKER, BIDDLE & REATH
Attorney for Relator

Settlement Agreement Between United States, OIG-HHS, THHSC, Metroplex Hospital and Health Outcomes Technologies (continued)

DATED: _____

BY: _____

JEFFERSON M. GRAY

Arent, Fox, Kintner, Plotkin & Kahn, PLLC

Counsel for Metroplex Hospital

HEALTH OUTCOMES TECHNOLOGIES

DATED: 12/12/01

BY: 

DRINKER, BIDDLE & REATH

Attorney for Relator