

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Attorney's Office for the Central District of Illinois, the United States Department of Justice, and the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), (collectively, the "United States"); Health Outcomes Technologies, Inc. ("Relator"); and Pekin Hospital (hereafter collectively, "the Parties"), through their authorized representatives.

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Pekin Hospital is a health care provider that provides inpatient hospital treatment of Medicare beneficiaries.

B. The United States contends that Pekin 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).

C. Medicare 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 program relies 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 by Pekin Hospital 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 Pekin Hospital under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically defined in paragraph 5 below, for engaging in the following alleged conduct: during the period from October, 1992 through April, 1998, Pekin Hospital submitted or caused to be submitted claims with the 482.89 principal diagnosis code 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 the Covered Conduct, Pekin Hospital received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against Pekin Hospital under the provision for permissive exclusion from the 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.

H. Pekin 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 Medicare with the principal diagnosis code of 482.89, and Pekin Hospital represents that such response has been truthful, accurate, and complete.

I. Pekin Hospital denies the contentions of the United States as set forth in Paragraphs F and G above and as set forth in United States ex rel. Health Outcomes Technologies, Inc. v. Pekin Hospital Hospital, et al., Civil Action No. 96-1552 (UNDER SEAL), in the United States District Court for the Eastern District of Pennsylvania. Pekin further denies participation in any fraudulent or grossly negligent conduct in connection with the submission of claims for payment to any Federal health care reimbursement program.

J. This Settlement Agreement is not an admission of wrongdoing by Pekin Hospital. 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. Pekin Hospital agrees to pay to the United States the sum of One Million, seventy-two thousand, five hundred and seventy-five dollars and ninety cents (\$1,072,575.90) (the "Settlement Amount"), as follows: Pekin Hospital agrees to make payment of the Settlement Amount in 24 equal monthly installments of \$44,690.66 beginning on the first day of the month following the effective date of the Settlement Agreement. Pekin Hospital agrees to make these installment payments by electronic funds transfer pursuant to written instructions provided by the United States Attorney's Office for the Central District of Illinois. Receipt of such instructions is hereby acknowledged.

2. Pekin 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 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. Nothing in this Paragraph, however, affects any privilege that might be available to Pekin Hospital or any statutory or regulatory obligation of Pekin Hospital, or Pekin 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 Pekin Hospital. Pekin Hospital agrees to the following specific representations and undertakings:

a. Pekin 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, Pekin 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. Pekin Hospital understands that it has undertaken an obligation to provide truthful and accurate information and testimony by itself and through its employees. Pekin 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. Should it be judged by the United States that Pekin Hospital has failed to cooperate fully or has intentionally given false, misleading, or incomplete information or testimony, Pekin Hospital thereafter shall be subject to prosecution for a criminal violation of which the United States has knowledge, including, but not limited to, perjury, obstruction of justice, and false statements.

3. Pekin Hospital has entered into a Corporate Integrity Agreement with the OIG-HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Pekin

Hospital will immediately upon execution of this Agreement implement its obligations as set forth in the Corporate Integrity Agreement.

4. Pekin 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 Conduct, including the investigation of the Covered Conduct and this Agreement.

5. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of Pekin Hospital set forth in this Agreement, conditioned upon Pekin Hospital's payment in full of the Settlement Amount, and subject to Paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies and departments) and Relator agree to release Pekin Hospital, including its current and former parent corporations, each of its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, officers, directors, affiliates, and the successors and assigns of any of them (collectively, the "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.

6. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of Pekin Hospital set forth in this Agreement and the Corporate Integrity Agreement attached as Exhibit A, conditioned upon Pekin Hospital's payment in full of the Settlement Amount, and

subject to paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) 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), for the Covered Conduct. The OIG-HHS expressly reserves all rights and obligations to exclude any of the Released Parties from Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a)(mandatory exclusion).

8. 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 Pekin 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 stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs pursuant to 42 U.S.C. § 1320a-7(a);
- (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 Pekin Hospital; and

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

(8) Any claims against individuals, including officers and employees; however, if such individuals are legally entitled to repayment from Pekin Hospital, by claim for indemnification, contribution, reimbursement or otherwise as the result of a claim brought by the United States, the releases provided in Paragraphs 5, 6 and 7 above shall apply to such individuals with respect to that claim.

9. The Settlement Amount that Pekin Hospital must 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 related to the Covered Conduct, if any; and Pekin Hospital agrees not to resubmit to any Medicare carrier or intermediary any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. Pekin 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 the Released Parties 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) Pekin 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 including the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Agreement), (4) the negotiation of this Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare and Medicaid programs. These unallowable costs will be separately estimated and accounted for by Pekin Hospital and Pekin Hospital will 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 Pekin Hospital or any of its subsidiaries to the Medicare or Medicaid programs.

Pekin Hospital further agrees that within 90 days of the effective date of this Agreement it will identify to applicable Medicare fiscal intermediaries, carriers and/or contractors and Medicaid fiscal agents, any unallowable costs (as defined in this Paragraph 10) 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 Pekin 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. Pekin Hospital agrees that the United States will be entitled to recoup from Pekin 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



United States Attorney's Office for the Central District of Illinois, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Pekin Hospital or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph 10) on Pekin 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. Pekin Hospital waives and will not assert any defenses Pekin Hospital 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 the Double Jeopardy or Excessive Fines Clause of the Constitution. Pekin Hospital agrees that the Settlement Amount is not punitive in nature or effect for purposes of 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.

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

13. Pekin 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. Pekin Hospital waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

14. 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.

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

16. 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 Eastern District of Pennsylvania, except that disputes arising under the Corporate Integrity Agreement shall be resolved exclusively pursuant to the means set forth in the Corporate Integrity Agreement.

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

18. 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 that Pekin Hospital be dismissed with prejudice from the action captioned United States ex rel. Health Outcomes Technologies, Inc. v. Pekin Hospital Hospital, et al., Civil Action No. 96-1552 (UNDER SEAL), in the United States District Court for the Eastern District of Pennsylvania.

19. By this Agreement, the Relator and Relator's counsel will release and will be deemed to release Pekin Hospital from any claim that the Relator, and/or Relator's counsel may

have under 31 U.S.C. §§ 3730(d) and 3730(c)(5) to pay Relator's or Relator's counsel attorneys' fees, expenses and costs.

20. Conditioned on Pekin Hospital's payment in full of the Settlement Amount, Relator shall receive from the United States the amount of \$150,160.62 ("Relator's Share"). The United States shall pay Relator this amount within a reasonable time after receipt by the United States from Pekin Hospital of the Settlement Amount. It is expressly understood and agreed that the United States in no way promises or guarantees nor is liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment of the Relator's Share except as provided herein for funds actually collected and received by the United States. Relator further agrees that its share of the proceeds from this settlement agreement shall be paid to relator over time consistent with paragraph 1 of this Settlement Agreement.

21. On receipt of the payment described in Paragraph 22 above, Relator 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 action captioned United States ex rel. Health Outcomes Technologies, Inc. v. Pekin Hospital Hospital, et al., Civil Action No. 96-1552 (UNDER SEAL), as against Pekin Hospital, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from Pekin Hospital. Relator agrees that receipt of the Relator's Share fully satisfies and settles all claims Relator may have under this Agreement. Relator further agrees that the settlement evidenced by this Agreement is fair, adequate and reasonable, and Relator will not challenge the settlement pursuant to 31 U.S.C. § 3730(e)(2)(B).

22. The undersigned individuals signing this Agreement on behalf of Pekin Hospital and Relator represent and warrant that they are authorized to execute this Agreement on behalf of

those entities. 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.

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 effective on the date of signature of the last signatory to the Agreement.

25. This Agreement is binding on all successors, assigns, transferees, and heirs of Pekin Hospital and Relator.

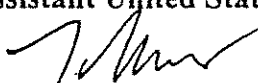
**THE UNITED STATES OF AMERICA**

**FRANCES C. HULIN  
UNITED STATES ATTORNEY  
CENTRAL DISTRICT OF ILLINOIS**

DATED: 4/20/01

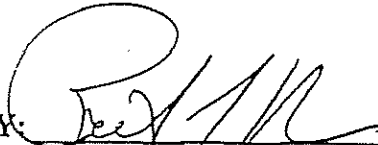
BY:   
**STEPHEN A. KUBIATOWSKI**  
Assistant United States Attorney

DATED: 4/25/9

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

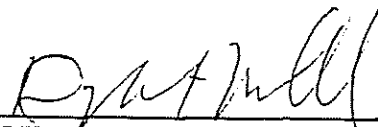
PEKIN HOSPITAL

DATED: 4/19/01

BY:   
ROBERT J. MOORE  
Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:

DATED: 4-19-01

BY:   
DOUGLASS A. MARSHALL, Esq.  
Hinshaw & Culbertson  
Counsel for Pekin Hospital  
Hospital

HEALTH OUTCOMES TECHNOLOGIES, INC.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Health Outcomes Technologies, Inc.

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

DRINKER, BIDDLE & REATH  
Attorneys for Relator  
Health Outcomes Technologies, Inc.

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DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
ROBERT J. MOORE  
Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
DOUGLASS A. MARSHALL, Esq.  
Hinshaw & Culbertson  
  
Counsel for Pekin Hospital  
Hospital

HEALTH OUTCOMES TECHNOLOGIES, INC.

DATED: 4/23/01

BY: [Signature]  
Health Outcomes Technologies, Inc.

APPROVED AS TO FORM AND CONTENT:

DATED: 4/25/01

BY: [Signature]  
BRINKER, BIDDLE & REATH  
Attorneys for Relator  
Health Outcomes Technologies, Inc.