

SETTLEMENT AGREEMENT

I. PARTIES

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"); Banner Health Systems (Banner); and Debbie Evans (the Relator) (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. Banner, f/k/a Lutheran Health Systems, operated and managed the Washakie Memorial Hospital, Worland, Wyoming, and its associated home health agency, as well as four other home health agencies in Wyoming during the time period 1995 - 1999.

B. The Relator is a resident of Wyoming. On or about June 18, 2001, she filed suit in the United States District Court, District of Wyoming on behalf of the United States against Banner, *United States ex rel. Debbie Evans v. Banner Health Systems, et al*, No. 01CV1033B, alleging in Count I that Banner violated the False Claim Act (FCA), 31 U.S.C. §§ 3729-3733, and alleging certain employment claims in Counts II, III, and IV (hereinafter "the Civil Action"). Ms. Evans was employed by Banner as a reimbursement coordinator from April, 1994, until June, 1999. Ms. Evans' duties as a reimbursement coordinator involved preparing Health Care Financing Administration (HCFA) form 485's, which are the plans of care (POCs) for home health care patients. She also was responsible for billing activities and conducting chart audits.

C. The United States and Relator contend Banner submitted or caused to be submitted false claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg.

D. The United States and Relator contend that the following Banner facilities violated the FCA during the years 1995-1999, by submitting false claims to the Medicare Program to obtain reimbursement for home health care visits which were not reasonable and necessary within the meaning of the applicable Medicare regulations, or for which the amount, frequency and duration of services were not reasonable and necessary: Washakie Memorial Hospital Home Health Agency, Worland, Wyoming; LHS Home and Community Care - Casper Home Health Agency; LHS Home and Community Care - Laramie Home Health Agency; LHS Home and Community Care - Rock Springs Home Health Agency; and LHS Home and Community Care - Cheyenne Home Health Agency (hereinafter referred to as the "Covered Conduct").

E. This Agreement is neither an admission of liability by Banner nor a concession by the United States that its claims are not well founded. Banner denies the contentions of the United States and the Relator as set forth in Paragraphs II C and D above.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

A. Banner agrees to pay to the United States \$6,100,000.00 (the "Settlement Amount"). The United States agrees to pay \$1,000,000.00 of the Settlement Amount to the Relator. The foregoing payments shall be made as follows:

1. Banner agrees to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States. Banner agrees to make this transfer within three (3) business days of the Effective Date of this Agreement.

2. Contingent upon the United States receiving the full Settlement Amount from Banner, and as soon as feasible after receipt, the United States agrees to pay \$1,000,000.00 to the Relator, Debbie Evans, through a deposit of the Relator's share to the R. Michael Shickich Attorney-Client Trust Fund, by means of electronic funds transfer, pursuant to written instructions to be provided by R. Michael Shickich or his designated representative.

B. Subject to the exceptions in Paragraph III.D below, in consideration of the obligations of Banner in this Agreement, and conditioned upon Banner's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) and Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agree to release Banner from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under: the FCA, 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. No individuals are released by this Agreement.

C. In consideration of the obligations of Banner in this Agreement including the Integrity Requirements of Paragraph III.G, and conditioned upon Banner's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Banner 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, subject to the exceptions in Paragraph III.D. below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Banner from the Medicare, Medicaid, or other Federal health care program 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 III.D below.

D. 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 Banner and Relator) are the following claims of the United States:

1. Any civil, criminal or administrative liability 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;

4. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

5. Any liability based upon such obligations as are created by this Agreement;

6. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

7. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

8. Any liability for failure to deliver goods or services due; and

9. Any liability of individuals, including officers and employees.

E. Conditioned upon receipt of the payment described in Paragraph IIIA, the Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in connection with this Civil Action, or arising from the filing of this Civil Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Civil Action. The Relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

F. Conditioned upon receipt of the payment described in Paragraph III.A, the Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, agrees to release Banner, its officers, directors, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs. Relator fully and finally releases Banner, its officers, directors, employees, servants, and agents from any

claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Relator has asserted, could have asserted, or may assert in the future against Banner, its officers, directors, employees, servants, and agents, related to the Covered Conduct, and the investigation and prosecution thereof, or any claim arising out of or related to her employment.

G. Integrity Requirements. Banner shall adhere to the following integrity requirements for a period of three (3) years from the Effective Date:

1. Continued Implementation of Corporate Compliance Program. Banner shall continue to implement its Corporate Compliance Program, as described in the Declaration attached hereto and incorporated herein by this reference as Appendix A, and continue to provide, at a minimum, the same level of resources currently provided, throughout this time period. Banner may amend its Corporate Compliance Program as it deems necessary, so long as those amendments are consistent with the overall objective of ensuring compliance with the requirements of Medicare, Medicaid, and all other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f).

2. Reporting of Overpayments. Banner shall promptly refund to the appropriate Federal health care program payor any identified Overpayment(s). For purposes of this Agreement, an "Overpayment" shall mean the amount of money Banner has received in excess of the amount due and payable under any Federal health care program requirements. If, at any time, Banner identifies or learns of any Overpayment, Banner shall notify the payor (*e.g.*, Medicare fiscal intermediary or carrier) within 30 days after identification of the Overpayment and take remedial steps within 60 days after identification (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the Overpayment from

recurring. Also, within 30 days after identification of the Overpayment, Banner shall repay the Overpayment to the appropriate payor to the extent such Overpayment has been quantified. If not yet quantified, within 30 days after identification, Banner shall notify the payor of its efforts to quantify the Overpayment amount along with a schedule of when such work is expected to be completed. Notification and repayment to the payor shall be done in accordance with the payor's policies, and for Medicare contractors, shall include the information contained on the Overpayment Refund Form, provided as Appendix C to this Agreement.

3. Reportable Events. Banner shall report to OIG-HHS in writing within 30 days after making a determination (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) that there is a Reportable Event, which shall mean anything that involves: (a) a substantial Overpayment, or (b) a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized. In such report, Banner shall include the following information:

i. if the Reportable Event results in an Overpayment, the report to OIG-HHS shall be made at the same time as the notification to the payor required in Paragraph III.G.2., and shall include all of the information on the Overpayment Refund Form, as well as:

A. the payor's name, address, and contact person to whom the Overpayment was sent; and

B. the date of the check and identification number (or electronic transaction number) by which the Overpayment was repaid/refunded;

- ii. a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;
- iii. a description of Banner's actions taken to correct the Reportable Event; and
- iv. any further steps Banner plans to take to address the Reportable Event and prevent it from recurring.

4. Notification of Government Investigation or Legal Proceedings. Within 30 days after discovery, Banner shall notify OIG-HHS, in writing, of any ongoing investigation or legal proceeding known to Banner conducted or brought by a governmental entity or its agents involving an allegation that Banner has committed a crime or has engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Banner shall also provide written notice to OIG-HHS within 30 days after the resolution of the matter, and shall provide OIG-HHS with a description of the findings and/or results of the investigation or proceedings, if any.

5. Annual Reporting Requirements. Each one-year period, beginning with the one-year period following the Effective Date of this Agreement, shall be referred to as a "Reporting Period." Banner shall submit to OIG-HHS annually a report that sets forth the following information for each Reporting Period ("Annual Report"):

- i. A description of any material amendments to its Corporate Compliance Program;

ii. Any changes to the level of resources dedicated to its Corporate Compliance Program;

iii. A summary of any internal or external reviews, audits, or analyses of its Corporate Compliance Program and any corrective action plans developed in response to such reviews, audits, or analyses;

iv. A summary of any internal or external reviews, audits, or analyses related to billing Medicare and Medicaid for services and any corrective action plans developed in response to such reviews, audits, or analyses;

v. A report of the aggregate Overpayments that have been returned to the Federal health care programs. Overpayment amounts shall be broken down into the following categories: inpatient Medicare, outpatient Medicare, Medicaid (report each state separately, if applicable), and other Federal health care programs. Overpayment amounts that are routinely reconciled or adjusted pursuant to policies and procedures established by the payor do not need to be included in this aggregate Overpayment report;

vi. A summary by facility of the percentage of Banner's Covered Persons (as defined in Paragraph 2 of Appendix A) who have received compliance training during the reporting period; and

vii. A certification that, during the Reporting Period, Banner has complied with the requirements of this Paragraph III.G.5.

The first annual report shall be received by OIG-HHS no later than 60 days after the first anniversary of the Effective Date. Subsequent annual reports shall be received by OIG-HHS no later

than the anniversary date of the due date of the first annual report. Each annual report shall include a certification by Banner's Vice President, Ethics and Compliance, that he has reviewed the report and has made reasonable inquiry regarding its content and believes that the information contained therein is accurate and truthful.

6. Notifications and Submission of Annual Reports. Unless otherwise specified in writing after the Effective Date, all notifications and Annual Reports required under this Agreement shall be submitted to the following addresses:

OIG:

Administrative and Civil Remedies Branch
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, S.W.
Washington, DC 20201
Telephone: 202-619-2078
Facsimile: 202-205-0604

Banner:

Steven W. Ortquist
Vice President of Ethics and Compliance
Banner Health Systems
1441 North 12th Street
Phoenix, AZ 85006
Telephone: 602-495-4000
Facsimile: 602-417-3728

Unless otherwise specified, all notifications and reports required by this Agreement may be made by certified mail, overnight mail, hand delivery, or other means, provided that there is proof that such report or notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

7. OIG-HHS Inspection, Audit, and Review Rights. In addition to any other rights OIG may have by statute, regulation, or contract, OIG-HHS or its duly authorized representative(s) may examine or request copies of Banner's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Banner's locations for the purpose of verifying and evaluating: (a) Banner's compliance with the terms of the Integrity Requirements of this Agreement; and (b) Banner's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Banner to OIG-HHS or its duly authorized representative(s) at all reasonable times for inspection, audit, or reproduction. Furthermore, for purposes of this provision, OIG-HHS or its duly authorized representative(s) may interview any of Banner's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG-HHS. Banner shall assist OIG-HHS or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG-HHS's request. Banner's employees may elect to be interviewed with or without a representative of Banner present.

8. Document and Record Retention.

a. Banner shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with the Integrity Requirements of this Agreement, for four (4) years (or longer if otherwise required by law).

b. Nothing in this Paragraph III.G shall constitute a waiver by Banner of, or require Banner to waive in the future, any applicable attorney-client privilege. Notwithstanding that

fact, the existence of any such privilege shall not be used by Banner to avoid its obligations under this Agreement.

H. Banner waives and will not assert any defenses Banner 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 a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Banner agrees that this Agreement 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.

I. Banner fully and finally releases Relator and the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Banner has asserted, could have asserted, or may assert in the future against the Relator, for herself and for her heirs, successors, attorneys, agents, and assigns and the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

J. The Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or any State payer, related to the Covered Conduct; and Banner shall not resubmit to any Medicare carrier or intermediary or any

State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

K. Banner agrees to the following:

1. Unallowable Costs Defined: that 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. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Banner, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs":

(a) the matters covered by this Agreement,

(b) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement,

(c) Banner's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

(d) the negotiation and performance of this Agreement,

(e) the payment Banner makes to the United States pursuant to this Agreement and any payments that Banner may make to Relator, including costs and attorneys fees, and

(f) the obligations undertaken pursuant to Paragraph III.G to prepare and submit reports to the OIG-HHS.

(All costs described or set forth in this paragraph are hereafter, "unallowable costs").

2. Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for in non-reimbursable cost centers by Banner, and Banner 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 Banner or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

3. Treatment of Unallowable Costs Previously Submitted for Payment: Banner further agrees that within 90 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 Banner or any of its subsidiaries or affiliates, 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. Banner agrees that the United States, at a minimum, shall be entitled to recoup from Banner 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 Banner or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Banner or any of its subsidiaries' cost reports, cost statements, or information reports.

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

L. 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 III.M. below.

M. Banner 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.

N. Banner warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Banner, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended

to hinder, delay, or defraud any entity to which Banner was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

O. Each Party will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

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

R. 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 District of Wyoming, except that disputes arising under the Integrity Requirements of Paragraph III.G shall be resolved exclusively under the dispute provisions at Appendix B to this Agreement.

S. This Agreement constitute(s) the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except only the consent of OIG-HHS and Banner, in writing, shall be necessary to modify of the Integrity Requirements of Paragraph III.G, or Appendices A, B, or C.

T. Upon receipt of the payments described in Paragraph III.A above, the Parties within five (5) business days of receipt of the payment described in Paragraph III.A above will notify the Court, simultaneously, that (a) the United States is partially intervening in this action with respect to the FCA claims against Banner for the Covered Conduct; (b) notwithstanding such intervention,

the Parties have reached a settlement; (c) pursuant to this settlement all Parties have stipulated that the Relator and the United States dismiss the claims for the Covered Conduct with prejudice: and (d) pursuant to this settlement the Relator stipulates that she dismissed those certain employment claims with prejudice to Relator. The Parties shall file a Stipulation of Dismissal and Proposed Order consistent with this Paragraph.

U. The individuals signing this Agreement on behalf of Banner represent and warrant that they are authorized by Banner to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

V. This Agreement is executed in triplicate originals (one each for Banner, the Relator, and the United States), each shall be of the same force and effect at law, and all of which constitute one and the same agreement.

W. This Agreement is binding on Banner's successors, transferees, heirs, and assigns.

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

Y. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

ON BEHALF OF THE UNITED STATES OF AMERICA

Dated: _____

By: _____
ELIZABETH A. RINALDO
Attorney, Civil Division
Department of Justice

ON BEHALF OF THE UNITED STATES OF AMERICA

Dated: _____

By: _____

THOMAS D. ROBERTS
Assistant United States Attorney
District of Wyoming

ON BEHALF OF THE UNITED STATES OF AMERICA

Dated: _____

By: _____

LARRY J. GOLDBERG

Assistant Inspector General for Legal
Affairs

Office of Counsel to the Inspector General
Department of Health and Human Services

ON BEHALF OF BANNER HEALTH SYSTEMS

Dated: _____

By: _____

David S. Rosenbloom
McDermott, Will, and Emery

ON BEHALF OF BANNER HEALTH SYSTEMS

Dated: _____

By: _____

Michael J Krampner
Krampner Fuller & Hambrick

RELATOR, DEBBIE EVANS

Dated: _____

By: _____

Debbie Evans
Individually and as Relator

ON BEHALF OF RELATOR'S COUNSEL

Dated: _____

By: _____
R. Michael Shickich

APPENDIX A

DECLARATION

This declarant is currently the Vice President of Ethics and Compliance, Banner Health Systems (Banner) and has personal knowledge of the facts included herein. The following describes the compliance program currently in place at Banner.

1. Banner has in place a Corporate Compliance Program (“Program”), including a Compliance Officer and a Compliance Committee made up of members of senior management necessary to support the Compliance Officer in fulfilling his responsibilities under the Program (e.g., Vice President, Finance; Senior Vice President & General Counsel; System Director, Internal Audit; Senior Vice President, Human Resources; System Vice President, Business Health and Risk Management). The annual operating budget for the Program is attached hereto as Exhibit A, and Banner shall sustain the total level of funding reflected therein for three (3) years subsequent to the signature date hereof.

2. Banner’s Program currently applies to the following persons: Banner’s officers, directors, and employees (including employed physicians). Banner’s Program will be expanded within 90 days after the date this Declaration is executed to apply to all (a) individuals and entities employed or engaged by or as contractors, subcontractors, agents, and other persons who provide direct patient care items or services for Banner or who perform billing or coding functions on behalf of Banner (but excluding vendors or suppliers whose sole relationship with Banner is the sale or lease of medical supplies and equipment to Banner); and (b) physicians not employed by Banner but with staff privileges. (All persons described in this Paragraph 2 are hereinafter “Covered Persons.”)

3. Banner has in place a Code of Conduct that includes Banner's commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements. Banner requires (and will require) all of its Covered Persons, when engaged in activities relating in any way to Banner, to comply with all Federal health care program requirements and with the Policies and Procedures described in Paragraph 4 below. Banner's Covered Persons have the right to use the Disclosure Program described in Paragraph 7 below. Banner commits to nonretaliation and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

4. Banner has in place Policies and Procedures that address the Federal health care program (defined at 42 U.S.C. § 1320a-7b(f)) reimbursement issues that are relevant to Banner's operations. Such policies and procedures include, but are not limited to, the following policies and procedures: **(1) Basic Requirements for Third Party Billing; (2) Prohibited Billing Practices; (3) Compliance Program Obligations; (4) Credit Balance Procedure; (5) Medicare Quarterly Credit Reports; (6) Prohibition Against Retaliation for Reporting Non-Compliance; (7) Prohibition Against Kickbacks and Bribes; (8) Three Day Rule - Medicare Billing; (9) Code of Conduct; (10) home care billing; (11) screening of Ineligible Persons; (12) Business Courtesies, Meals, and Entertainment; (13) Business Gifts; (14) Charity Care; (15) Compliance Bill Holds; (16) Conflict of Interest; (17) Discharge - Transfer Rule - Medicare Billing; (18) Sponsored Training and Education; and (19) Travel Expense Reimbursement by Outside Persons and Entities.** The Credit Balance Procedure policies are currently "regional" policies, but will be replaced by systemwide policies within 90 days after the date this Declaration is executed. All policies and procedures are made available to all

employed Covered Persons through Banner's intranet based policy and procedure databank or by other means as appropriate. All nonemployed Covered Persons will have access to relevant policies and procedures in connection with training and on request, but for security reasons are not provided unrestricted access to Banner's intranet.

5. a. Banner requires Covered Persons who are employed or providing patient care items or services under contract with Banner to attend the compliance components of the new employee orientation program, as well as annual retraining on Banner's Compliance Program and Code of Conduct, and annually to certify that he or she has received, read, understood, and will abide by the Code of Conduct. This annual training and/or certification may be completed electronically. **Certain Banner Covered Persons ("Relevant Covered Persons") are involved in various risk areas, such as billing and coding, provision of services in conjunction with residents, admitting and registration, and providing and documenting clinical services. Banner's Compliance Program has historically provided individualized specific training in several areas of the company that are involved in such activities.** Banner is currently negotiating a contract to purchase a computer-based compliance training system, and will be implementing this system as required training for Relevant Covered Persons in 2004. This arrangement will provide training material for Relevant Covered Persons working in high risk areas such as admitting and registration, lab, home health, HIMS, and patient finance. Banner will continue to provide more ad-hoc specific training as needed using various training methods such as formal classroom training, video conferencing, computer based training, and newsletters.

b. Relevant Covered Persons who are not employed by Banner may be permitted to participate instead in specialized compliance training programs provided by their respective employers if (i) their employer certifies that the compliance training program satisfies all the guidelines issued by OIG-HHS for compliance programs applicable to the employer's business, and that employees performing such services for Banner must participate in annual training, and (ii) their employer provides reasonable evidence, upon request but no less frequently than annually, that the employer's compliance program is active, appropriately funded, and effective.

c. Except as set forth in Paragraph 5.d. below, Banner's annual goal is for Covered Persons to complete all compliance training in a timely manner. Covered Persons identified as delinquent in completing training requirements are subject to progressive discipline, contract termination, or exclusion from performing services for or on behalf of Banner.

d. Banner distributes its Code of Conduct annually to all Covered Persons who are physicians with medical staff privileges, and is currently working to implement a process where these physicians will certify upon appointment or reappointment to a Banner medical staff that they have received, read, understood, and will abide by the Code of Conduct. Banner will make the training described in Paragraph 5.a. available to all Covered Persons who are physicians with medical staff privileges and will use its best efforts to encourage their attendance and participation at such training. Banner will also maintain records for the number of Covered Persons who attend the training and will provide such records to OIG-HHS as part of its Annual Reports.

6. a. Banner has in place an internal compliance audit department that performs periodic audits to test Banner's compliance with applicable Federal health care program requirements,

including focused audits relating to specific risks areas identified by OIG-HHS or through the Program. Banner is **budgeted for four** full-time qualified employees at its corporate or regional headquarters who are assigned to work on compliance program audits.

b. Banner's Compliance Programs also fosters self-monitoring of compliance with applicable Federal health care program requirements by departments or organizations. These self-monitoring activities include monitoring of Banner's Home Care business, which includes reviews of a minimum of 5 records per month per facility for facilities with less than 2000 visits per month and a minimum of 10 records per month per facility for facilities with more than 2000 visits per month. This monitoring includes reviews of therapy visits, physician orders, timely completion of OASIS assessments, OASIS coding, and medical necessity of second PPS episode.

7. a. Banner maintains a Disclosure Program that includes a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with Banner's policies, conduct, practices, or procedures with respect to a Federal health care program believed by the individual to be a potential violation of criminal, civil, or administrative law. Banner publicizes the existence of the disclosure mechanism to all personnel.

b. The Disclosure Program emphasizes a nonretribution, nonretaliation policy, and includes a reporting mechanism for anonymous communications for which appropriate confidentiality is maintained. Each disclosure is reviewed by the Compliance Officer (or designee) who either investigates the disclosure or refers the disclosure to the relevant department or manager for follow up and any appropriate corrective action.

c. The Compliance Officer (or designee) maintains a disclosure log, which includes a record and summary of each disclosure received (whether anonymous or not), the status of Banner's internal review of the allegations, and any corrective action taken in response to the internal review.

8. Banner has in place a policy and procedure for screening all prospective officers, directors, employees, medical staff members, contractors, and agents to ensure that they are not excluded from Medicare, Medicaid, or Federal health care programs by: (a) requiring such persons to disclose whether they are excluded; and (b) appropriately querying the General Services Administrations List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://oig.hhs.gov>). (these lists shall hereinafter be referred to as the "Exclusion Lists"). Banner also performs annual screening of its officers, directors, employees, medical staff members, contractors, and agents against the Exclusion Lists and requires all officers, directors, employees, medical staff members, contractors, and agents to disclose immediately any such person who is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible (hereinafter "Ineligible Person"). Banner also has a policy in place that, if Banner has actual notice that any officers, directors, employees, medical staff members, contractors and agents has become an Ineligible Person, Banner shall remove such person from responsibility for, or involvement with, Banner's business operations related to the

Federal health care program and shall remove such person from any position for which the person's compensation or items or services furnished, ordered, or prescribed by the person are paid in whole or in part, directly or indirectly, by Federal health care programs or otherwise with Federal funds, at least until such time as the person is reinstated into participation in the Federal health care programs. (Nothing in this Declaration affects the responsibility of Banner to refrain from billing Federal health care programs for items and services furnished, ordered, or prescribed by Ineligible Persons or Banner's liability for any overpayments received by Banner as a result of billing any Federal health care program for such items and services.)

The undersigned signatory represents and warrants that he/she is authorized to execute this declaration on behalf of Banner. The undersigned signatory hereby certifies that he has made reasonable inquiry regarding the foregoing Declaration and believes that such Declaration is accurate, complete, and truthful.

Executed on this ___ day of _____.

Steven W. Ortquist
Vice President Ethics and Compliance
Banner Health

APPENDIX B

BREACH AND DEFAULT PROVISIONS

The Banner is expected to fully and timely comply with all of the Integrity Requirements set forth in Paragraph G. of the Settlement Agreement.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Banner and HHS-OIG hereby agree that failure to comply with the Integrity Requirements set forth in this Agreement may lead to the imposition of the following monetary penalties (hereinafter referred to as “Stipulated Penalties”) in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Banner fails to have in place any of the provisions described in the Declaration attached to this Agreement as Appendix A:

- a. a Compliance Officer and Compliance Committee;
- b. a written Code of Conduct;
- c. written Policies and Procedures;
- d. annual program training;
- e. internal and external compliance monitoring and audit provisions; and
- f. a Disclosure Program.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Banner fails to meet any of the deadlines for the submission of annual reports to HHS-OIG as described in Paragraph G. of this Agreement.

3. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day Banner has as an officer or director an ineligible person or for each day Banner employs or contracts with, has as an agent, or grants staff privileges to an ineligible person and that person: (a) has responsibility for or involvement with Banner's business operations related to the Federal health care programs; or (b) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds. If the ineligible person is a health care practitioner with staff privileges at Banner, then the Stipulated Penalty shall accrue for each day that the ineligible person furnished, ordered, or prescribed any items or services at Banner that were payable in whole or in part by any Federal health care program. The Stipulated Penalty described in this Paragraph A.3 shall not be demanded for any time period during which Banner can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in Paragraph 7 of the Declaration) as to the status of the person.

4. A Stipulated Penalty of \$1,500 for each day Banner fails to grant access to the information or documentation as required in the Integrity Requirements of Paragraph G. of this Agreement. (This Stipulated Penalty shall begin to accrue on the date Banner fails to grant access.)

5. A Stipulated Penalty of \$5,000 for each false certification submitted by or on behalf of Banner as part of its Annual Reports or as otherwise required by this Agreement.

6. A Stipulated Penalty of \$1,000 for each day Banner fails to comply fully and adequately with any of the Integrity Requirements of this Agreement. HHS-OIG shall provide

notice to Banner stating the specific grounds for its determination that Banner has failed to comply fully and adequately with the Integrity Requirements at issue and the steps Banner shall take to comply with the Integrity Requirements of this Agreement. (This Stipulated Penalty shall begin to accrue 10 days after Banner receives notice from HHS-OIG of the failure to comply.) A Stipulated Penalty as described in this Paragraph shall not be demanded for any violation for which HHS-OIG has sought a Stipulated Penalty under Paragraphs A. 1-5, above.

B. Timely Written Requests for Extensions. Banner may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by the Integrity Requirements of this Agreement. Notwithstanding any other provision in this Paragraph, if HHS-OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Banner fails to meet the revised deadline set by HHS-OIG. Notwithstanding any other provision in this Paragraph, if HHS-OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until three business days after Banner receives HHS-OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by HHS-OIG at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Banner has failed to comply with any of the obligations described in Paragraph A and after determining that Stipulated Penalties are

appropriate, HHS-OIG shall notify Banner of: (a) Banner's failure to comply; and (b) HHS-OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Banner shall either: (a) cure the breach to HHS-OIG's satisfaction and pay the applicable Stipulated Penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute HHS-OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in Paragraph E. In the event Banner elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Banner cures, to HHS-OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a Material Breach of the Integrity Requirements of this Agreement and shall be grounds for exclusion under Paragraph D, below.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to: "Secretary of the Department of Health and Human Services," and submitted to HHS-OIG at the address set forth in Paragraph G.6. of the Integrity Requirements.

4. *Independence from Material Breach Determination.* Except as set forth in Paragraph D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for HHS-OIG's decision that Banner has materially breached the Integrity Requirements of this Agreement, which decision shall be made at HHS-OIG's discretion and shall be governed by the provisions in Paragraph D, below.

D. Exclusion for Material Breach of the Integrity Requirements of this Agreement.

1. *Definition of Material Breach.* A Material Breach of the Integrity Requirements of this Agreement means:

a. a failure by Banner to report a Reportable Event, take corrective action, and make the appropriate refunds, as required in Paragraph G.3. of the Integrity Requirements;

b. a repeated or flagrant violation of the obligations under the Integrity Requirements of this Agreement, including, but not limited to, the obligations addressed in Paragraph A, above;

c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Paragraph C, above.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a Material Breach of the Integrity Requirements of this Agreement by Banner constitutes an independent basis for Banner's exclusion from participation in the Federal health care programs. Upon a determination by HHS-OIG that Banner has materially breached Integrity Requirements of this Agreement and that exclusion is the appropriate remedy, HHS-OIG shall notify Banner of: (a) Banner's Material Breach; and (b) HHS-OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

3. *Opportunity to Cure.* Banner shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to HHS-OIG's satisfaction that:

a. Banner is in compliance with the Integrity Requirements of this Agreement cited by HHS-OIG as being the basis for the Material Breach;

b. the alleged Material Breach has been cured; or

c. the alleged Material Breach cannot be cured within the 30-day period, but that: (i) Banner has begun to take action to cure the Material Breach; (ii) Banner is pursuing such action with due diligence; and (iii) Banner has provided to HHS-OIG a reasonable timetable for curing the Material Breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Banner fails to satisfy the requirements of Paragraph D.3, above, HHS-OIG may exclude Banner from participation in the Federal health care programs. HHS-OIG shall notify Banner in writing of its determination to exclude Banner (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in Paragraph E, below, the exclusion shall go into effect 30 days after the date of receipt of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and nonprocurement programs. Reinstatement to program participation is not automatic. If, at the end of the period of exclusion, Banner wishes to apply for reinstatement, Banner shall submit a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

E. Dispute Resolution

1. *Review Rights.* Upon HHS-OIG's delivery to Banner of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the Integrity Requirements of this Agreement, Banner shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to the Integrity Requirements of this Agreement. Specifically, HHS-OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS ALJ and, in the event of an appeal, the HHS Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within 10 days after receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days after receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* 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 Stipulated Penalties under the Integrity Requirements of this Agreement shall be: (a) whether Banner was in full and timely compliance the Integrity Requirements of this Agreement for which HHS-OIG demands payment; and (b) the period of noncompliance. Banner shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. HHS-OIG shall not have the right to appeal to the DAB an adverse ALJ decision related to Stipulated Penalties. If the ALJ agrees with HHS-OIG with regard to a finding of a breach of the

Integrity Requirements of this Agreement and orders Banner to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Banner requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of HHS-OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues its decision.

3. *Exclusion Review.* 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 Material Breach of the Integrity Requirements of this Agreement shall be:

a. whether Banner was in Material Breach of the Integrity Requirements of this Agreement;

b. whether such breach was continuing on the date of the Exclusion Letter; and

c. whether the alleged Material Breach could not have been cured within the 30-day period, but that: (i) Banner had begun to take action to cure the Material Breach within that period; (ii) Banner has pursued and is pursuing such action with due diligence; and (iii) Banner provided to HHS-OIG within that period a reasonable timetable for curing the Material Breach and Banner has followed the timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to HHS-OIG, or, if the ALJ rules for Banner, only after a DAB decision in favor of HHS-OIG. Banner's election of its contractual right to appeal to the DAB shall not abrogate HHS-OIG's authority to exclude Banner upon the issuance of an ALJ's decision in favor of HHS-OIG. If the

ALJ sustains the determination of HHS-OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Banner may request review of the ALJ decision by the DAB. If the DAB finds in favor of HHS-OIG after an ALJ decision adverse to HHS-OIG, the exclusion shall take effect 20 days after the DAB decision. Banner shall waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of Banner, Banner shall be reinstated effective on the date of the original exclusion.

4. *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to the Integrity Requirements of this Agreement agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under the Integrity Requirements of this Agreement.

APPENDIX C

OVERPAYMENT REFUND

TO BE COMPLETED BY MEDICARE CONTRACTOR

Date: _____

Contractor Deposit Control # _____ Date of Deposit: _____

Contractor Contact Name: _____ Phone # _____

C o n t a c t o r
Address: _____

Contractor Fax: _____

TO BE COMPLETED BY PROVIDER/PHYSICIAN/SUPPLIER

Please complete and forward to Medicare Contractor. This form, or a similar document containing the following information, should accompany every voluntary refund so that receipt of check is properly recorded and applied.

PROVIDER/PHYSICIAN/SUPPLIER NAME _____

ADDRESS _____

PROVIDER/PHYSICIAN/SUPPLIER # _____ CHECK NUMBER# _____

CONTACT PERSON: _____ PHONE # _____

AMOUNT OF CHECK \$ _____ CHECK DATE _____

REFUND INFORMATION

For each Claim, provide the following:

Patient Name _____ HIC # _____

Medicare Claim Number _____ Claim Amount Refunded \$ _____

Reason Code for Claim Adjustment: _____ (Select reason code from list below. Use one reason per claim)

(Please list all claim numbers involved. Attach separate sheet, if necessary)

Note: If Specific Patient/HIC/Claim #/Claim Amount data not available for all claims due to Statistical Sampling, please indicate methodology and formula used to determine amount and reason for overpayment: _____

For Institutional Facilities Only:

Cost Report Year(s) _____
(If multiple cost report years are involved, provide a breakdown by amount and corresponding cost report year.)

For OIG Reporting Requirements:

Do you have a Corporate Integrity Agreement with OIG? _____ Yes _____ No

Reason Codes:

<u>Billing/Clerical Error</u>	<u>MSP/Other Payer Involvement</u>	<u>Miscellaneous</u>
01 - Corrected Date of Service Documentation	08 - MSP Group Health Plan Insurance	13 - Insufficient
02 - Duplicate Enrolled in an HMO	09 - MSP No Fault Insurance	14 - Patient
03 - Corrected CPT Code Rendered	10 - MSP Liability Insurance	15 - Services Not
04 - Not Our Patient(s) Necessity	11 - MSP, Workers Comp.(Including Black Lung	16 - Medical
05 - Modifier Added/Removed Specify)		17 - Other (Please
06 - Billed in Error	12 - Veterans Administration	
07 - Corrected CPT Code		

