

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into among 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"); Relator Health Outcomes Technologies, Inc.; and St. Vincent's Health System (including St. Vincent's Medical Center and Riverside Hospital) ("SVHS"), through their authorized representatives. The United States, Relator and SVHS are hereafter referred to as "the Parties."

II. PREAMBLE

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

- A. SVHS is a health care provider, and submitted or caused to be submitted, claims to Medicare for the inpatient treatment of Medicare beneficiaries.
- B. The United States contends that SVHS 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. §§ 1395-1395 ggg(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.¹

E. The United States conducted an investigation into inpatient payment claims submitted to Medicare by St. Vincent's Medical Center and Riverside 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 SVHS 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 4 below, for engaging in the following alleged conduct during the period from October 1, 1992 through September 30, 1997: St. Vincent's Medical Center and Riverside Hospital submitted or caused to be submitted claims to Medicare 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, St. Vincent's Medical Center and Riverside Hospital received payments to which they were not entitled.

G. SVHS 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 Program with the principal diagnosis code of 482.89, and SVHS represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

H. By entering into this Agreement, SVHS does not admit the contentions of the United States as set forth in Paragraph F above and as set forth in *United States ex rel. Health*

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

Outcomes Technologies, Inc. v. St. Vincent's Medical Center and Riverside Hospital (M.D. Fla.), and the United States does not concede that its claims are not well founded.

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. SVHS agrees to pay to the United States \$1,650,000 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. SVHS agrees to make this electronic funds transfer no later than three days from the Effective Date of this Agreement.

2. SVHS agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement, for the Covered Conduct. Upon reasonable notice, SVHS 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. SVHS releases the United States, HHS, and each of their agencies, officers, agents, employees, and contractors and their employees and Relator 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.

4. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of SVHS set forth in this Agreement, and conditioned upon SVHS's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments), and Relator agree to release SVHS, its subsidiaries, predecessors, successors, assigns, affiliates, current and former directors, officers and employees 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 other entities and individuals.

5. 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 SVHS 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 otherwise stated in this Agreement, any administrative liability, including mandatory and permissive 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, provided by SVHS;

(7) Any liability for claims based on a failure to deliver items or services billed.

6. SVHS 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 Clauses of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. SVHS 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.

7. The Amount that SVHS must pay pursuant to this Agreement by electronic wire transfer, pursuant to Paragraph 1 above, shall 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 any State payer, related to the Covered Conduct; and SVHS agrees not to resubmit to any Medicare carrier or intermediary or any State payer any claims related to the Covered Conduct, and agrees not to appeal any denials of any previously submitted claims.

8. SVHS agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations 42 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 SVHS, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs":

(1) the matters covered by this Agreement;

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

(3) SVHS'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);

(4) the negotiation and performance of this Agreement; and

(5) the payment made pursuant to this Agreement.

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

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for in non-reimbursable cost centers by SVHS, and SVHS 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 SVHS or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

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

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

9. 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 Paragraphs 4 and 10.

10. SVHS 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. SVHS waives any causes of action against these beneficiaries or their parents, sponsors, legally responsible individuals or third party payors based upon the claims defined as the Covered Conduct.

11. 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 St. Vincent's Hospital and Riverside Hospital be dismissed with prejudice pursuant to the terms of this Agreement from the action captioned United States ex rel. Health Outcomes Technologies v. St. Vincent's Hospital and Riverside Hospital, Civil Action No. 8:01-CV-1384-T-24EAJ (UNDER SEAL), in the United States District Court for the Middle District of Florida.

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

13. Conditioned on SVHS's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$231,000. The United States shall pay relator this amount within a reasonable time after receipt by the United States from SVHS 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 or any relator's share payments except as provided herein for funds actually collected and received by the United States.

14. On receipt of the payment described in Paragraph 13 above, Relator, for itself and its 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 the claims in this Civil Action against St. Vincent's Medical Center and Riverside Hospital, or arising from the filing of the Civil Action against St. Vincent's Medical Center and Riverside Hospital, 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).

15. Except as expressly provided to the contrary in this Agreement, 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.

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

17. 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 Middle District of Florida.

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

19. The undersigned individuals signing this Agreement on behalf of SVHS 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.

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

21. This Agreement is binding on SVHS's and Relator's successors, transferees, and assigns.

22. 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.

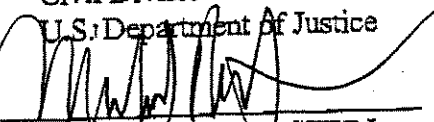
THE UNITED STATES OF AMERICA

DATED: 1-12-04

BY: 

MICHAEL F. HERTZ
JOYCE R. BRANDA
JAMIE ANN YAVELBERG
KEITH E. DOBBINS

Civil Division
U.S. Department of Justice

BY: 

MICHAEL RUBENSTEIN
Assistant United States Attorney

ST. VINCENT'S HEALTH SYSTEM

DATED: _____

BY: _____

JOHN MAHER
Chief Executive Officer
St. Vincent's Health System

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THE UNITED STATES OF AMERICA

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JOYCE R. BRANDA
JAMIE ANN YAVELBERG
KEITH E. DOBBINS
Civil Division
U.S. Department of Justice

BY: _____

MICHAEL RUBINSTEIN
Assistant United States Attorney

ST. VINCENT'S HEALTH SYSTEM

DATED: 5 Jan 04

BY: _____

JOHN MAHER
Chief Executive Officer
St. Vincent's Health System

DATED: _____

BY: Christopher A. Myers
CHRISTOPHER A. MYERS, ESQ.
JENNIFER A. SHORT, ESQ.
Counsel for SVHS

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: _____

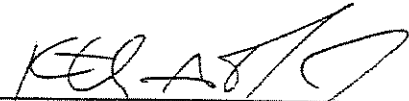
BY: _____
KENNETH L. TRUJILLO, ESQ.
Attorney for Relator
Health Outcomes Technologies

DATED: _____

BY: _____
CHRISTOPHER A. MYERS, ESQ.
JENNIFER A. SHORT, ESQ.
Counsel for SVHS

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: 12-22-03

BY: 
_____ KENNETH I. TRUJILLO, ESQ.
Attorney for Relator
Health Outcomes Technologies