

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 ("United States"); and Covenant Medical Center and Wheaton Franciscan Healthcare-Iowa, Inc. (f/k/a Covenant Health System, Inc. (collectively "Covenant")) (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. Covenant is a not-for-profit integrated health care system located and doing business in Waterloo, Iowa.
- B. The United States contends that Covenant 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. §§ 1395-1395hhh.
- C. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against Covenant for engaging in the following conduct during the period from 2005 through 2008 (hereinafter referred to as the "Covered Conduct"): submitting false claims to Medicare for inpatient and outpatient hospital services referred, ordered or arranged for by five employed physicians who were paid compensation by Covenant that exceeded the fair market value of the services provided by those physicians; such claims were false because Section 1877 of the Social Security Act ("SSA"), 42 U.S.C. § 1395nn (also known as the Stark Law) prohibited Covenant from billing Medicare for "designated health services" referred or ordered by physicians with whom it had such improper financial relationships.

D. Covenant denies the allegations of the United States referenced above and denies that it engaged in any wrongful conduct in connection with the Covered Conduct. Covenant contends that the compensation it paid to the five employed physicians was consistent with the fair market value of the services provided by those physicians.

E. This Agreement is made in compromise of disputed claims and it is neither an admission of facts or liability by Covenant related to the Covered Conduct, nor a concession by the United States that its claims are not well founded.

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

1. Covenant agrees to pay to the United States the sum of \$4,500,000.00 plus interest at a rate of 3.00% per annum (\$369.86 per day) from July 27, 2009 and continuing until and including the day before the payment is made (the "Settlement Amount"). Covenant agrees to pay the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern District of Iowa. Covenant agrees to make this electronic funds transfer no later than 10 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims), below, in consideration of the obligations of Covenant in this Agreement, conditioned upon Covenant's full payment of the Settlement Amount, the United States (on behalf of itself, its

officers, agents, agencies, and departments) agrees to release Covenant, together with its current and former officers, directors, trustees, employees, servants and agents, and the successors and assigns of any of them, individually or collectively, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the civil money provisions of the Stark Law, 42 U.S.C. § 1395nn(g)(3) and (g)(4); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. 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 Covenant) are the following claims of the United States:

- a. Any civil, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;

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

g. Any liability for failure to deliver goods or services due.

4. Covenant waives and shall not assert any defenses Covenant may have to any criminal prosecution or administrative action relating to the Covered Conduct that 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. 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.

5. Covenant fully and finally releases 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) that Covenant has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. The Settlement Amount 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 Covenant agrees not to resubmit to any

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

7. Covenant agrees to the following:

a. 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. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Covenant, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be “Unallowable Costs” on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (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) Covenant’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 Covenant makes to the United States pursuant to this Agreement, including costs and attorneys fees.

(All costs described or set forth in this Paragraph 7.a. are hereafter “Unallowable Costs.”)

b. Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for by Covenant, and Covenant shall 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 Covenant or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Covenant further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid 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 Covenant or any of its subsidiaries or affiliates, and shall 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. Covenant agrees that the United States, at a minimum, shall be entitled to recoup from Covenant 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 Covenant or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Covenant or any of its subsidiaries or affiliates' 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 re-examine Covenant's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. 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 as set forth in this Agreement or to the extent provided for in Paragraph 9 (waiver for beneficiaries paragraph), below.

9. Covenant agrees that it 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.

10. Covenant 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 shall 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 Covenant, 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 to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Covenant was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

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

13. 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 is the United States District Court for the Northern District of Iowa.

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

15. The individuals signing this Agreement on behalf of Covenant represent and warrant that they are authorized by Covenant 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.

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

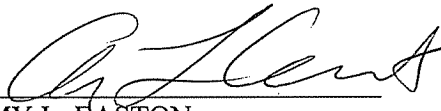
17. This Agreement is binding on Covenant's successors, transferees, heirs, and assigns.

18. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 8/25/09

BY: _____



AMY L. EASTON
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

MATT M. DUMMERMUTH
United States Attorney

DATED: _____

BY: _____

ROBERT M. BUTLER
Assistant United States Attorney
United States Attorneys Office
for the Northern District of Iowa

THE UNITED STATES OF AMERICA


DATED: _____

BY: _____

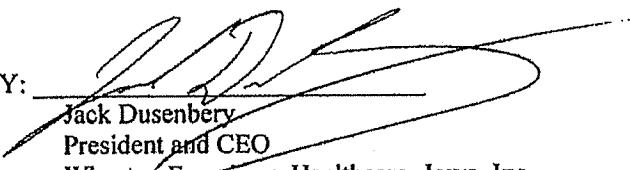
AMY L. EASTON
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice


MATT M. DUMMERMUTH
United States Attorney

DATED: 21 August 2009 BY: _____


ROBERT M. BUTLER
Assistant United States Attorney
United States Attorneys Office
for the Northern District of Iowa

COVENANT

DATED: 8/24/09 BY: 
Jack Dusenbery
President and CEO
Wheaton Franciscan Healthcare- Iowa, Inc.

DATED: 8/24/09 BY: 
Albert W. Shay, Esq.
Morgan, Lewis & Bockius LLP
Counsel for Covenant