

CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
BEVERLY ENTERPRISES, INC.

I. Preamble

Beverly Enterprises, Inc., hereby enters into this Corporate Integrity Agreement ("CIA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure compliance by Beverly Enterprises, Inc. and the subsidiaries and affiliates through which it operates (these entities are collectively referred to hereinafter as "Beverly"), and Beverly's officers, directors and employees with the requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (hereinafter collectively referred to as the "Federal health care programs.") Beverly's compliance with the terms and conditions in this CIA shall constitute an element of Beverly's present responsibility with regard to participation in the Federal health care programs. Contemporaneously with this CIA, Beverly is entering into a Settlement Agreement with the United States, and this CIA is incorporated by reference into the Settlement Agreement.

II. Term of the CIA

The period of the compliance obligations assumed by Beverly under this CIA shall be nine years from the effective date of this CIA, or for the period of time Beverly remains obligated by the payment terms of the Settlement Agreement, whichever is shorter, but in any event for not less than five years. The effective date of this CIA will be the date on which the final signatory of this CIA executes this CIA.

III. Corporate Integrity Obligations

Beverly currently operates a Compliance Program. Beverly agrees that during the term of this CIA, its Compliance Program will be operated in a manner that meets the requirements of this CIA.

A. Compliance Officers and Committees. Beverly shall maintain or establish the following positions and committees during the term of this CIA. If Beverly changes its structure in a way that affects these positions and committees, Beverly shall ensure that under the new structure Beverly devotes at least equal resources to its Compliance Program as are devoted under the structure described in this section.

1. *Audit and Compliance Committee of the Board of Directors.*

Beverly currently has an Audit Committee and a Litigation/Compliance Committee of the Board of Directors and will maintain during the term of this CIA an Audit and Compliance Committee of the Board of Directors (the "Board Committee") comprised of four or more outside directors of Beverly Enterprises, Inc. The Board Committee shall be responsible for the review of matters related to the Compliance Program, this CIA, and compliance with requirements of Federal health care programs. The Board Committee shall meet at least semi-annually. When new members of the Board Committee are appointed or the responsibilities or authorities of the Board Committee are substantially changed, Beverly shall notify the OIG, in writing, within 15 days of such a change.

2. *Compliance Officer.* Beverly has appointed a Compliance Officer, who is and shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements of Federal health care programs and the obligations set forth in this CIA. The Compliance Officer shall be a member of senior management of Beverly (i.e., not subordinate to Beverly's general counsel or CFO) with unrestricted access to the Board Committee, who shall make regular (at least semi-annual) reports regarding compliance matters directly to the CEO and the Board Committee, and who shall be authorized to report to the Board Committee at any time. The Compliance Officer is and shall remain responsible for monitoring the day-to-day activities engaged in by Beverly to further its compliance objectives as well as for any reporting obligations created under this CIA. The Compliance Officer, or his or her designees who have been directed to bring all issues concerning Beverly's compliance with Federal health care program requirements to the attention of the Compliance Officer,

shall also review the portions of all Beverly internal audit reports that relate to Federal health care program compliance and take all reasonable steps to ensure that problems identified by the Compliance Program or internal audits are appropriately addressed through corrective action plans. In the event a new Compliance Officer is appointed during the term of this CIA, Beverly shall notify the OIG, in writing, within 15 days of such a change. Should it become necessary to pursue employment of a new Compliance Officer, Beverly shall appoint an acting Compliance Officer who shall be granted authority equal to that of the Compliance Officer.

3. *Compliance Committee.* Beverly has appointed a Compliance Working Group ("Compliance Committee"). The Compliance Committee includes and shall continue to include the Compliance Officer and other appropriate officers and/or department heads as necessary to meet the requirements of this CIA within Beverly's corporate structure (e.g., representatives of each major function, such as internal audit, quality management, labor relations, Medicare coverage and compliance group, prospective payment group, and regulatory review group). The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities.

4. *Compliance Liaisons.* Beverly has designated its Group Vice Presidents as Compliance Liaisons. During the term of this CIA, Group Vice Presidents (or their compliance equivalent within Beverly) shall perform the role of Compliance Liaisons. Compliance Liaisons are and shall continue to be responsible for monitoring and ensuring execution of the Compliance Program and the relevant requirements of this CIA at their operational level and at the groups and Beverly facilities for which the Compliance Liaison is responsible. Compliance Liaisons are and shall remain responsible for: providing leadership and support regarding compliance issues at the group and facility levels; developing and distributing written compliance-related materials; ensuring the provision of appropriate training and the proper documentation of such training; ensuring the appropriate distribution of internal and external audit reports and monitoring of

corrective action related to such reports or other identified compliance-related issues; ensuring proper reporting and responses to compliance-related issues; and monitoring facilities' Executive Directors and group-level staff in the execution of their compliance-related functions. Compliance Liaisons shall be responsible for supervising staff at each group level who will assist the Compliance Liaison in fulfilling his or her compliance functions. Group level compliance functions are currently performed by Group Vice Presidents, group HR managers, group business office consultants and group clinical managers/nurse consultants. If these group functions change, Beverly shall devote equal resources to the group-level compliance functions. Compliance Liaisons shall certify annually that all plans of correction related to identified problems in facilities or Beverly operations for which they are responsible have been implemented and that all Compliance Program concerns have been reported. Such certifications shall be maintained by the Compliance Officer and shall be available to the OIG upon request. False certifications by the Compliance Liaison shall be grounds for immediate termination, and proper execution of Compliance Liaison duties shall be a major component of the performance evaluations of Group Vice Presidents (or the Compliance Liaison equivalent within Beverly).

5. *Executive Directors.* Each Beverly facility is managed by an Executive Director. The Executive Directors will continue to be responsible for compliance in their facilities. Execution of compliance duties shall be a major component of the performance evaluations of Executive Directors. Should it become necessary to pursue employment of a new Executive Director, Beverly shall appoint an acting Executive Director who shall be granted authority equal to that of the Executive Director to carry out all required duties, including those with respect to Beverly's Compliance Program.

B. *Written Standards.*

1. *Code of Conduct.* Beverly has established a Code of Conduct and Business Ethics ("Code of Conduct").

a. CONTENTS. The Code of Conduct includes and shall continue to include the following:

- 1) Beverly's commitment to full compliance with all statutes, regulations, and guidelines applicable to Federal health care programs, including its commitment to prepare and submit accurate billings and reports consistent with Federal health care program statutes, regulations, procedures and instructions otherwise communicated by appropriate regulatory agencies; e.g., the Health Care Financing Administration ("HCFA"), and/or fiscal intermediaries or carriers;
- 2) Beverly's requirement that all of its covered persons shall be expected to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Beverly's own Policies and Procedures (including the requirements of this CIA);
- 3) the requirement that all of Beverly's covered persons shall be expected to report suspected violations of any statute, regulation, or guideline applicable to Federal health care programs or of Beverly's own Policies and Procedures;
- 4) the possible consequences to both Beverly and covered persons of failure to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Beverly's own Policies and Procedures or of failure to report such non-compliance; and
- 5) the right of all covered persons to use the Confidential Disclosure Program, as well as Beverly's commitment to confidentiality and non-retaliation with respect to disclosures.

b. DEFINITIONS. For the purposes of this CIA, a "covered person" is any of Beverly's officers, directors or employees who provide patient-care to Federal

health care program beneficiaries or who are involved in Beverly's billings or related submissions to Federal health care programs.

c. DISTRIBUTION AND CERTIFICATION. Beverly currently requires the Code of Conduct to be distributed to all employees during each employee's orientation and thereafter, as revisions occur or replacement copies are needed. Within 90 days of the effective date of this CIA, Beverly shall distribute the Code of Conduct to all covered persons who have not already received a copy of the current Code of Conduct. Within 90 days of the effective date of the CIA, each covered person shall certify, in writing, that he or she has received, read, understands, and will abide by Beverly's Code of Conduct. New covered persons shall continue to receive the Code of Conduct during orientation and shall complete the required certification within 30 days after becoming a covered person or within 90 days of the effective date of the CIA, whichever is later. The certifications required by this section shall be made available to the OIG upon request. The promotion of, and adherence to, the Code of Conduct is and shall continue to be an element in evaluating the performance of all covered persons. Beverly will annually review the Code of Conduct and will revise or supplement it as necessary. Beverly shall distribute revisions and supplements to the Code of Conduct to covered persons within 30 days of such changes being completed. Covered persons shall certify on an annual basis that they have received, read, understand and will abide by the Code of Conduct.

d. COVERED CONTRACTOR REQUIREMENTS. For each of its Covered Contractors, Beverly shall: (1) require in its contract with the Covered Contractor that the Covered Contractor acknowledges Beverly's Compliance Program and Code of Conduct; (2) ensure that the Code of Conduct is provided (either by Beverly or the Covered Contractor) to all Covered Contractors; (3) require in the contract with the Covered Contractor that the Covered Contractor obtain and retain (subject to review by Beverly and/or the OIG) signed certification from all of its employees who provide patient care to Federal health care program beneficiaries at Beverly facilities that they have received, read, and understand the Code of Conduct and agree to abide by the

requirements of the Compliance Program. Beverly shall require future contracts with Covered Contractors to include the above-described provisions. Within 90 days of the execution of this CIA, Beverly shall attempt in good faith to reform contracts with its then-current Covered Contractors to include a provision pursuant to which the contractors will provide assurance satisfactory to Beverly that these requirements will be met. For the purposes of this CIA, a "Covered Contractor" is an entity (or individual) that, although not a covered person, nevertheless provides patient care to Federal health care program beneficiaries in Beverly facilities or participates in Beverly's billings or related submissions to Federal health care programs for Beverly on a regular basis (i.e., more often than two weeks over a 52-week period).

2. *Policies and Procedures.* Beverly has developed written Policies and Procedures regarding its Compliance Program and its compliance with relevant Federal and state health care statutes, regulations, and guidelines, including the requirements of the Federal health care programs. Beverly shall continue to assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. The Policies and Procedures will be available to OIG upon request. Beverly shall continue to ensure that relevant portions of the Policies and Procedures are distributed to the appropriate covered persons. Compliance staff or supervisors are and shall continue to be available to explain any and all Policies and Procedures. At a minimum, the Policies and Procedures shall specifically address:

a. measures intended to ensure that Beverly fully complies with the particular provisions of Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg (1999) and 1396-1396v (1997), and all regulations (including but not limited to 42 C.F.R. Parts 442 and 483) and guidelines promulgated pursuant to these statutes, including:

1) consistent with the provisions of 42 C.F.R. Part 483, policies requiring use of a coordinated interdisciplinary approach to providing care to patients, including, but not limited to, policies addressing resident assessment and care

planning; nutrition, diabetes care and wound care; infection control; abuse and neglect policies and reporting procedures; appropriate drug therapies; appropriate mental health services; provision of basic care needs; incontinence care; resident rights and restraint use; activities of daily living (ADL) care; therapy services; quality of life, including accommodation of needs and activities; and assessment of patient competence to make treatment decisions; and

2) policies addressing compliance with the requirements applicable to Medicare's Prospective Payment System ("PPS") for skilled nursing facilities, including, but not limited to, billing and cost report preparation policies and procedures;

b. measures designed to ensure that compliance issues identified internally (e.g., through reports to supervisors, internal audits) or externally (e.g., audits performed by Beverly's audit or accounting firm(s) or any other externally performed reviews) are promptly and appropriately investigated and, if the investigation substantiates compliance issues, Beverly implements appropriate corrective action plans and monitors compliance with such plans;

c. non-retaliation policies and methods for employees to make disclosures or otherwise report on compliance issues to Beverly management through the Confidential Disclosure Program required by section III.E; and

d. disciplinary policies designed to ensure that individuals whose conduct has contributed to a violation of Beverly's Compliance Program or of Federal health care program requirements are retrained, and/or disciplined, and/or terminated, as appropriate.

C. Training and Education. Beverly shall continue to conduct semi-annual training programs and shall ensure that the training meets the following requirements. The training requirements are cumulative (not exclusive) so that one person may be required to attend training in both general and substantive areas. Persons providing the training must continue to be knowledgeable about the relevant subject area. All training

requirements set forth below shall become effective within 90 days of the effective date of this CIA and shall be repeated annually during the term of the CIA.

1. *General Training.* Beverly shall continue to conduct and document training regarding its Compliance Program and Code of Conduct for each covered person. As part of its first semi-annual training program conducted following implementation of this CIA, Beverly will provide general training to each covered person. Beverly shall provide at least two hours of general training to each covered person during each year while the CIA is in effect. This general training shall explain Beverly's:

- a. Corporate Integrity Agreement requirements;
- b. Compliance Program (including the Policies and Procedures as they pertain to general compliance issues); and
- c. Code of Conduct.

2. *Specific Training.* Each covered person who is involved directly in the delivery of patient care or in the preparation or submission of information (including claims, bills, and reports) to any Federal health care program will continue to receive specific training pertinent to his or her responsibilities (as described below) in addition to the general training provided above. At least annually, two hours of specific training to covered persons who are involved directly in the delivery of patient care or in the preparation or submission of information (including claims, bills, and reports) to any Federal health care program will include a discussion of:

- a. the submission of accurate information, e.g., Minimum Data Set ("MDS"), to Federal health care programs, if relevant to the person's duties;
- b. policies, procedures and other requirements applicable to the documentation of medical records, if relevant to the person's duties;
- c. the personal obligation of each individual involved in the patient care, documentation, or reimbursement processes to ensure that such information provided is accurate;

- d. applicable statutes, regulations, program requirements and directives relevant to the person's duties;
- e. the legal sanctions for improper submissions to Federal health care programs; and
- f. examples of relevant billing practices found to have been improper.

3. *New Covered Persons.* New covered persons shall be cycled into Beverly's training programs and shall participate in the next training cycle after they become a covered person. New covered persons involved directly in the delivery of patient care or in the preparation or submission of information (including claims, bills, and reports) to any Federal health care program shall be supervised by trained covered persons until they have completed the specific training relevant to their delivery of patient care and/or their preparation or submission of information to Federal health care programs. New covered persons involved directly in the delivery of patient care or in the preparation or submission of information (including claims, bills, and reports) to any Federal health care program shall have begun to receive specific training within 30 days of employment, and shall have completed specific training within 90 days of employment.

4. *Certifications and Retention.* An attendance log shall document the attendance of each person who is required to attend training. The Executive Director, Compliance Liaison or other person providing the training shall certify the accuracy of the attendance log. The attendance log shall specify the type of training received and the date received. The Compliance Officer shall retain the attendance logs and certifications as well as the specific course materials and make all of these logs, certifications and materials available to OIG upon request.

D. Review Procedures. Beverly performs certain reviews as part of its Compliance Program and its ongoing operations. Beverly will continue these reviews and modify them as necessary to comply with certain additional reviews required by this

CIA. The review procedures described in this section shall be performed on an annual basis for each calendar year during the term of this CIA. The Annual Reports required by this CIA will include reports on the findings and results of all of the review procedures required by this section during the year covered by that Annual Report.

1. *Statistical Sampling and Appraisal Method.* All matters related to this CIA that involve statistical sampling or appraisal shall be conducted using the OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," available on the Internet at www.hhs.gov/oas/ratstat.html. Wherever the CIA requires the use of a random sample, the sample shall be selected and appraised using RAT-STATS and Beverly shall retain all of the supporting documentation related to the selection and appraisal of the samples.

2. *Beverly Quality Reviews.* Beverly currently performs Quality Reviews under its "Beverly Quality System." The Quality Reviews (including Quality Review Follow-ups) are described in a June 1999 notebook, which Beverly has furnished to the OIG. Beverly shall continue to conduct its Quality Reviews in the manner described in the June 1999 notebook or in a manner that devotes at least equal resources to performing the function of quality review at Beverly Facilities. Beverly shall notify the OIG within 15 days of any material changes to the form, manner, or frequency of these Quality Reviews.

3. *Independent Review Organization.* Beverly shall retain an entity, such as an accounting, auditing or consulting firm (hereinafter "Independent Review Organization" or "IRO"), to perform review procedures to assist Beverly and the OIG in assessing the adequacy of Beverly's submissions to Federal health care programs and its compliance with this CIA. The IRO must be independent from Beverly and must have expertise in the billing, reporting and other requirements of the Federal health care programs from which Beverly seeks reimbursement. The IRO must be retained to conduct the review of the first year (2000) within 120 days of the effective date of this CIA. The IRO shall produce a separate report for each engagement. The IRO will

conduct two separate types of engagements. One will be an analysis of Beverly's claims submissions to the Federal health care programs to assist Beverly and OIG in determining compliance with all applicable statutes, regulations, and directives/guidance ("submissions engagement"). The submissions engagement will assess, in part, Beverly's internal audits, which are described below. The second engagement will determine whether Beverly is in compliance with this CIA ("compliance engagement").

4. *Beverly's MDS (Minimum Data Set) Audit.* Beverly's Internal Audit Department ("Internal Audit") shall implement and oversee an MDS Audit, which will review Medicare (Part A) claims and will focus on the minimum data set ("MDS"). Beverly shall ensure that the MDS Audit is conducted by qualified individuals (including, but not limited to, clinical and medical personnel). To the extent any facility personnel are involved in the MDS Audits, Beverly shall ensure that the individual who was involved in preparing the original claim (including through input in the entries on the MDS) on behalf of a Beverly facility is not involved in the review of that particular facility's claims submissions to Federal health care programs. In order to ensure the integrity of the MDS Audit process, Beverly will issue a policy emphasizing the importance of accurately completing the reviews discussed below, and the possible consequences, up to and including termination, for failure to comply with this policy. The MDS Audit shall consist of a variable appraisal (dollar amount in error) sample. Because this engagement is designed as a variable appraisal, for the purposes of determining dollar amounts associated with errors, the final sampling unit will be a single claim (UB-92) and each associated MDS.

The MDS Audit shall consist of a two-stage process of claim reviews. The first stage shall be conducted using a random sample of a minimum of 15% of Beverly's facilities, but in no event less than seventy-five (75) facilities. Beverly shall retain copies of all of its work papers compiled with respect to its internal audits, which work papers shall be available to the OIG upon request.

a. **FIRST STAGE.** The first stage of the MDS Audit shall consist of a probe sample of thirty (30) claims at each facility selected as part of the random sample. The Compliance Officer, or his or her designee, shall select a stratified random sample of paid Medicare claims (UB-92) throughout the year for each of the facilities previously selected by the Compliance Officer. The probe sample cannot be used as part of any full sample reviewed during the second stage of the MDS Audit. The probe sample will be used to identify facilities that have exceeded a designated financial error rate and to determine the appropriate sample sizes for expanded sample reviews of the designated facilities in accordance with specified RAT-STATS parameters.

b. **SELECTION OF FACILITIES FOR SECOND STAGE.** The second stage of the MDS Audit will be performed for each individual facility selected as part of the probe sample for which the financial error rate (i.e., a downward change in a Resource Utilization Group (“RUG”) assignment that would result in an over-payment) in the first stage was greater than 5%. Nothing in this section shall relieve Beverly of its responsibility to correct inaccuracies noted in its probe sample. (The 5% financial error threshold only applies to criteria for sample expansion, not for extrapolation of an error rate.)

c. **SECOND STAGE.** The second stage shall be a full sample of Medicare paid claims (UB-92) (randomly selected by Internal Audit using the RAT-STATS software referenced above) during the annual reporting period by each applicable facility. This sample shall be selected at the end of each year. The full sample must contain a sufficient number of sample units to generate sample results that provide, at a minimum, a 90% confidence interval and a maximum precision (relative precision, i.e., semi-width of the confidence interval) of plus or minus 25% of the point estimate (i.e., the upper and lower bounds of the 90% confidence interval shall not exceed 125% and shall not fall below 75% of the midpoint of the confidence interval, respectively).

d. **CLAIM REVIEWS.** For each claim selected in the first and second stage, the associated MDS and the medical record documentation supporting the

MDS will be reviewed. The review process shall entail an evaluation of the MDS and verification that each entry that affects the RUG code outcome for the MDS is supported by the medical record for the corresponding period of time consistent with the assessment reference date ("ARD") specified on the MDS. In addition, data from the MDS will be re-entered into Beverly's Grouper (MDS data entry software program) to verify that the correct RUG code assignment was properly assigned on the UB-92. A financial error will be logged if there is insufficient support for an MDS data point(s) that results in a downward change in RUG assignment that would result in an overpayment.

5. *Ongoing Internal Audits.* If Beverly becomes aware that any facilities (including those not selected to be included as part of an annual MDS Audit) are potentially experiencing noncompliance with the Federal health care program requirements for claims submissions, Beverly shall, after reasonably determining further review is warranted, in addition to its other CIA obligations, conduct an internal audit to review the situation. If warranted, Internal Audit shall obtain a plan of correction and conduct appropriate follow-up to ensure that any inappropriate or improper practice related to claims submission identified is appropriately addressed, and shall report all such instances to the OIG, as specified in this CIA.

6. *Submissions Engagement.* The Submissions Engagement shall be performed by the aforementioned Independent Review Organization. As part of the Submissions Engagement, the IRO shall review Beverly's performance of the MDS Audit. The IRO shall review and evaluate the processes and controls used by Internal Audit in the MDS Audit. In addition, the IRO shall conduct its own analysis of a random sample of 10% of the claims reviewed in the MDS Audit. The reviews conducted by the IRO will follow the same standards set forth above with respect to the manner in which Internal Audit is to implement and oversee its review process, including, but not limited to, an evaluation of the MDS and verification that each entry that affects the RUG code outcome for the MDS is supported by the medical record. With respect to the entry of

MDS data, the Independent Review Organization shall use its own MDS data entry software program to compare resulting outputs (i.e., RUGs).

The results of the reviews performed by Internal Audit and the reviews performed by the IRO will be communicated to the OIG in the Annual Report. Each annual Submission Engagement analysis shall include the following components in its methodology:

1. Submissions Engagement Objective: a clear statement of the objective intended to be achieved by the submissions engagement and the procedure or combination of procedures that will be applied to achieve the objective.
2. Submissions Engagement Population: the identity of the population, which is the group about which information is needed and an explanation of the methodology used to develop the population and provide the basis for this determination.
3. Sources of Data: a full description of the source of the information upon which the submissions engagement conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and/or any contractual obligations.
4. Sampling Unit: a definition of the sampling unit (paid claim), which is any of the designated elements that comprise the population of interest.
5. Sampling Frame: the identity of the sampling frame, which is the totality of the sampling units from which the sample will be selected.

The Submissions Engagement shall provide:

- a. findings regarding Beverly's documentation, billing, and reporting (e.g., reporting of MDS and other information relevant to RUG) operations (including, but not limited to, the operation of the reporting system, strengths and weaknesses of this system, internal controls, effectiveness of the system);

- b. findings regarding whether Beverly is submitting accurate claims and resident assessments (MDS);
- c. findings regarding Beverly's procedures and adequacy of controls to correct inaccurate claims and resident assessments (MDS);
- d. findings regarding whether Beverly has complied with its obligations under the Settlement Agreement: (1) not to resubmit to any Federal health care program payers any previously denied claims related to the conduct addressed in the Settlement Agreement, and its obligations not to appeal any such denials of claims for any reason associated with the conduct addressed in the Settlement Agreement; and (2) not to charge to, or otherwise seek payment from, Federal payers for unallowable costs (as defined in the Settlement Agreement) and its obligations to identify and adjust any past charges of unallowable costs; and
- e. findings regarding the steps Beverly is taking and adequacy of controls to bring its operations into compliance or to correct problems (including whether Beverly has effectively implemented corrective action plans to address such problems) identified by these engagements, internal or external audits, or fiscal intermediary audits.

The OIG may obtain documentation from Beverly regarding the work Beverly has performed on these reviews, to assist the OIG in determining the appropriateness of the filings.

7. *Cost Reports.* Beverly's Internal Audit will continue its practice of testing Medicaid cost report processes and data in connection with its facility audits performed at 10% of Beverly's facilities on an annual basis. These facility audits include tests of square footage statistics, payroll costs, other operating costs and the proper classification of costs as reported in the facilities' general ledgers. In addition, Internal Audit randomly selects five Medicaid cost reports of facilities in states where the cost report has an effect upon Medicaid reimbursement. For these cost reports, Internal Audit

tests the classification of costs from the general ledgers to the cost report. Beverly will continue its practice of having its financial auditor review the results of Internal Audit's facility audits and tests of Medicaid cost reports. Beverly's financial auditor will review and test 10% of Internal Audit's work for reliance in its financial statement audit of Beverly. If there is any change in this Internal Audit procedure, based upon a change in the manner in which Beverly is reimbursed by the Federal health care programs, Beverly will notify the OIG within two (2) weeks of making any such change.

As part of the IRO's submissions engagement, the IRO shall perform agreed-upon-procedures on selected Medicaid cost reports, designed to assist the parties in determining that the expenses as reported in the facility's financial statements are accurately summarized in cost reports and that the cost reports are filed in accordance with Federal health care program requirements. The IRO shall randomly select for audit at least five cost reports submitted to states in which the cost report has an effect on Medicaid reimbursement. These five randomly selected cost reports by the IRO will not necessarily be the same cost reports as those randomly selected for review by Beverly's Internal Audit, as set forth in the preceding paragraph.

Beverly shall report the findings of all of the audits described above as part of its Annual Report. The OIG may obtain documentation from Beverly regarding the work Beverly has performed on these reviews, to assist the OIG in determining the appropriateness of the filings.

8. Compliance Engagement. An Independent Review Organization shall also conduct a compliance engagement, under which it shall perform agreed-upon-procedures designed to assist the parties in determining whether Beverly's program, policies, procedures, and operations comply with the terms of this CIA. This engagement shall include section by section findings regarding the requirements of this CIA. Beverly shall report the findings of the IRO's compliance engagement in its Annual Report to the OIG.

9. *Verification/Validation.* In the event that the OIG has reason to believe that Beverly's Submissions Engagement or Compliance Engagement fails to conform to its obligations under the CIA or indicates improper submissions not otherwise adequately addressed in the audit report, and thus determines that it is necessary to conduct an independent review to determine whether or the extent to which Beverly is complying with its obligations under this CIA, Beverly agrees to pay for the reasonable cost of any such review or engagement by the OIG or any of its designated agents.

E. Confidential Disclosure Program. Beverly operates a Confidential Disclosure Program, which includes a toll-free telephone Hotline. The Confidential Disclosure Program enables covered persons and other 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 Beverly's policies, practices or procedures with respect to a Federal health care program, believed by the individual to be inappropriate. Beverly shall continue to publicize the existence of the hotline (e.g., in training, e-mail, intranet, newsletters to employees).

The Confidential Disclosure Program shall continue to emphasize a non-retribution, non-retaliation policy, and include a reporting mechanism for anonymous, confidential communication. Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather the information in such a way as to elicit all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that the Compliance Officer or his or her designee reasonably determines further review is warranted, the Compliance Officer shall conduct such further review of the allegations and ensure that appropriate follow-up is conducted and that any inappropriate or improper practice identified is appropriately addressed.

The Compliance Officer shall continue to maintain a confidential disclosure log, which shall continue to include a record and summary of each allegation received, the status of the respective investigations, and any corrective action taken in response to the investigation. In its Annual Reports, Beverly shall provide: (1) its Monthly Customer Response Report Summaries; and (2) the more detailed Customer Response Report Log Entries for all calls categorized as "Quality Management" or "Billing" or any other calls that relate to Federal health care program billings or requests for reimbursement that relate to the period of the Annual Report. Beverly shall maintain and make available to the OIG upon request any other documents (subject to the provisions in section IX.) related to confidential disclosures (including their investigation and resolution) for at least two years after the reporting year in which the matter was resolved.

F. Ineligible Persons and Criminal Background Checks.

1. *Definition of Ineligible Person.* For purposes of this CIA, an "Ineligible Person" shall be any individual or entity who: (i) is currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal health care programs; or (ii) has been convicted of a criminal offense related to the provision of health care items or services (unless that person has been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment, or ineligibility).

2. *Screening Requirements.* Beverly currently has policies and procedures as part of its hiring process regarding the screening of prospective employees and contractors to prevent the hiring of, or contracting with, any Ineligible Person. Beverly shall continue to screen all employees and prospective contractors prior to engaging their services by: (i) requiring applicants to disclose whether they are Ineligible Persons; and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://www.arnet.gov/epls>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.hhs.gov/oig>) (these lists will hereinafter be referred to as the "Exclusion Lists").

3. *Review and Removal Requirement.* Within 120 days of the effective date of this CIA, Beverly will review its list of current employees and contractors against the Exclusion Lists. (For purposes of this paragraph, a contractor is a person or entity that Beverly pays directly.) Thereafter, Beverly will review the list semi-annually. If Beverly has notice that an employee or contractor has become an Ineligible Person, Beverly will remove such person from responsibility for, or involvement with, Beverly's business operations related to the Federal health care programs and shall remove such person from any 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 at least until such time as the person is reinstated into participation in the Federal health care programs. This paragraph does not impose any requirement on Beverly with respect to the screening of individual physicians who have no employment or contractual relationship with Beverly, even if such physicians provide services to residents of Beverly Nursing Facilities.

4. *Pending Charges and Proposed Exclusions.* If Beverly has notice that an employee or contractor is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, Beverly shall take all appropriate actions to ensure that the responsibilities of that employee or contractor do not adversely affect the quality of care rendered to any patient or resident, or the accuracy of any claims submitted to any Federal health care program.

5. *Criminal Background Checks.* Beverly conducts criminal background checks of potential employees pursuant to its Compliance Program. Beverly shall ensure that it: (a) complies with all Federal and state requirements regarding criminal background checks for covered persons; and (b) performs and completes a timely criminal background check on all individuals offered employment in a position that involves direct care of patients (and the offer of employment must be conditioned upon the results of the check). For the purposes of this CIA: (1) in states where Beverly or a vendor performs the background check, a timely criminal background check means a

check completed within 15 days of the offer of employment to the individual; or (2) in states where Beverly or its vendor must use a state agency to conduct the criminal background check, a timely criminal background check means a check conducted and completed as soon as reasonably possible (including providing the relevant information to the state agency prior to the offer of employment).

G. *Notification of Proceedings.* Within 30 days of discovery, Beverly shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that Beverly 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. Beverly shall also provide written notice to OIG within 30 days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

H. *Reporting.*

1. *Reporting of Overpayments.* Beverly shall continue to review its quarterly and annual costs reports and PIP requests as well as its internal and external audit reports. If, during any of its reviews or by any other means, Beverly identifies or learns of any billing, reporting, or other policies, procedures and/or practices that have resulted in an overpayment, Beverly shall continue its practice of correcting the overpayment by revising the next quarterly PIP request or filing an amended cost report, as appropriate and unless otherwise instructed by the payor, and shall take appropriate action to prevent the underlying problem and the overpayments from recurring. Within 30 days of each quarterly PIP request, Beverly shall continue to file with its fiscal intermediary a Quarterly Adjustment Report setting forth the existence of any billing errors, overpayments, or other technical, process, or documentation errors related to the reimbursement process. If an overpayment cannot be addressed in a Quarterly Adjustment Report, Beverly shall notify the payor within 30 days of discovering the overpayment and take remedial steps within 60 days of discovery (or such additional time

as may be agreed to by the payor) to repay the overpayment and correct the problem, including preventing the underlying problem and the overpayments from recurring.

2. *Reporting of Material Deficiencies.* If Beverly determines that there is a material deficiency, Beverly shall notify the OIG within 30 days of discovering the material deficiency. The notification to the OIG shall include: (a) a complete description of the material deficiency (including the relevant facts, persons involved, and legal and program authorities); (b) the amount of overpayment (if any) due to the material deficiency; (c) Beverly's actions (and future plans of action) to correct the material deficiency and to prevent such material deficiency from recurring; (d) the payor's name, address, and contact person where the overpayment (if any) was sent; and (e) the date of the check and identification number (or electronic transaction number) on which the overpayment (if any) was repaid.

3. *Definition of "Overpayment."* For purposes of this CIA, an "overpayment" shall mean the amount of money Beverly has received in excess of the amount due and payable under the Federal health care programs' statutes, regulations or program directives, including carrier and intermediary instructions.

4. *Definition of "Material Deficiency."* For purposes of this CIA, a "material deficiency" means: (i) a substantial overpayment from any Federal health care program; (ii) a matter that a reasonable person would consider a potential violation of 42 U.S.C. §§ 1320a-7, 1320a-7a or 1320a-7b, or another criminal or civil law applicable to any Federal health care program (even though not reported under subsection (i) as a substantial overpayment); or (iii) a violation of the obligation to provide items or services of a quality that meets professionally recognized standards of health care where such violation has occurred in one or more instances that presents an imminent danger to the health, safety or well-being of a Federal health care program beneficiary or places the beneficiary unnecessarily in high-risk situations. A material deficiency may be the result of an isolated event or a series of occurrences.

IV. New Business Units or Locations

A. Notice of New Business Units or Locations. Prior to purchasing, establishing, selling, or divesting a facility, Beverly shall notify the OIG in writing of the proposed action. This notification shall include the location of the existing or new operation(s), phone number, fax number, Federal health care program provider number(s) (if any), and the corresponding payor(s) (contractor specific) that has issued each provider number. Beverly shall further notify the OIG in writing once such proposed purchase, establishment, sale, or divestiture has been completed.

B. Obligations of New Business Units and Locations. Once a new business unit or location has been established, all covered persons at such locations shall be subject to the requirements in this CIA that apply to new covered persons (e.g., completing certifications and undergoing training).

V. Implementation and Annual Reports

A. Implementation Report. Within 150 days after the effective date of this CIA, Beverly shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number and position description of all of the individuals in positions described in section III.A;
2. a copy of Beverly's Code of Conduct required by section III.B.1;
3. the summary of the Policies and Procedures required by section III.B.2;
4. a description of the training programs required by section III.C, including a description of the targeted audiences and a schedule of when the training sessions were held;
5. a certification by the Compliance Officer that, to the best of his or her knowledge:
 - a. the Policies and Procedures required by section III.B have been developed, are being implemented, and have been distributed to all pertinent covered persons;

b. all covered persons have completed the Code of Conduct certification required by section III.B.1; and

c. all covered persons have completed the training and executed the certification required by section III.C.

6. a description of the confidential disclosure program required by section III.E;

7. the identity of the Independent Review Organization(s) and the proposed start and completion date of the engagements for the first year;

8. a summary of personnel actions taken pursuant to section III.F; and

9. a list of all of Beverly's locations (including mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s), and the name, address, and telephone number of the payor (specific contractor) that issued each provider identification number.

B. Annual Reports. Beverly shall submit to OIG Annual Reports with respect to the status and findings of Beverly's compliance activities for each of the calendar years for which this CIA has been in effect, starting with calendar year 2000. Each Annual Report shall be due on March 31 of the year following the calendar year covered in the Annual Report (e.g., the Annual Report for year 2000 shall be due on March 31, 2001). Each Annual Report shall include:

1. any change in the identity or position description of individuals in positions described in section III.A;

2. a certification by the Compliance Officer that, to the best of his or her knowledge:

a. all covered persons have completed the annual Code of Conduct certification required by section III.B.1;

b. all covered persons have completed the training and executed the certification required by section III.C; and

c. Beverly has complied with its obligations under the Settlement Agreement: (i) not to resubmit to any Federal health care program payors any previously denied claims related to the conduct addressed in the Settlement Agreement, and its obligation not to appeal any such denials of claims; and (ii) not to charge to or otherwise seek payment from Federal or state payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify and adjust any past charges of unallowable costs; and

d. Beverly has effectively implemented all plans of correction related to problems identified under this CIA, Beverly's Compliance Program, or internal audits;

3. notification (including the actual change or a detailed description of the change) of any changes or amendments to the Policies and Procedures required by section III.B and the reasons for such changes (e.g., change in contractor policy);

4. a complete copy of the original reports prepared pursuant to the Independent Review Organization's submissions and compliance engagements, including all of the information required in section III.D;

5. Beverly's response/corrective action plan to any issues raised by the Independent Review Organization;

6. a summary of material deficiencies identified and reported pursuant to section III.H and the corresponding corrective action plans;

7. a report of the aggregate overpayments that have been returned to the Federal health care programs that were discovered as a direct or indirect result of implementing this CIA and a summary of the corrective actions taken to address such overpayments. Overpayment amounts shall be broken down into the following categories: Medicare, Medicaid (report each applicable state separately) and other Federal health care programs;

8. a copy of the (1) Monthly Customer Response Report Summaries; and (2) the Customer Response Report Log Entries for all calls categorized as "Quality

Management" or "Billing" or any other calls that relate to the quality of care provided to patients or to billing or requests for reimbursement, as required by section III.E;

9. a description of any personnel actions (other than hiring) taken by Beverly as a result of the obligations in section III.F, and the name, title, and responsibilities of any person that falls within the ambit of section III.F.4, and the actions taken in response to the obligations set forth in that section;

10. a summary describing any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that Beverly has committed a crime or has engaged in fraudulent activities, which was required to have been reported pursuant to section III.G. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information; and

11. a description of all changes to the most recently provided list (as updated) of Beverly's locations (including mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s) and the payor (specific contractor) that issued each provider identification number.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer, under penalty of perjury, that: (1) Beverly is in compliance with all of the requirements of this CIA (unless the non-compliance is clearly and explicitly described in the Annual Report), to the best of his or her knowledge; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VI. Notifications and Submission of Reports

Unless otherwise stated in writing subsequent to the effective date of this CIA, all notifications and reports required under this CIA shall be submitted to the entities listed below:

OIG:

Civil Recoveries Branch - Compliance Unit
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, SW
Washington, DC 20201
Phone 202.619.2078
Fax 202.205.0604

Beverly:

Cletus Hess
Compliance Officer
Beverly Enterprises, Inc.
One Thousand Beverly Way
Fort Smith, AR 72919-4839
Phone 877.823.8375
Direct 501.201.4813
Fax 501.201.4801; 4802

VII. OIG Inspection, Audit and Review Rights

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s), may examine Beverly's books, records, and other documents and supporting materials and/or conduct an on-site review of any of Beverly's locations for the purpose of verifying and evaluating: (a) Beverly's compliance with the terms of this CIA; and (b) Beverly's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Beverly to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Beverly'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. Beverly agrees to assist OIG in contacting and arranging interviews with such individuals upon OIG's

request. Beverly's employees may elect to be interviewed with or without a representative of Beverly present.

VIII. Document and Record Retention

Beverly shall maintain for inspection all documents and records: (1) related to reimbursement from the Federal health care programs for at least seven years after the submission of the request for reimbursement; and (2) necessary to establishing Beverly's compliance with this CIA for at least three years following the submission of the Annual Report covering the relevant year.

IX. Disclosures and Privileges

Subject to HHS's Freedom of Information Act ("FOIA") procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify Beverly prior to any release by OIG of information submitted by Beverly pursuant to its obligations under this CIA and identified upon submission by Beverly as trade secrets, commercial or financial information and privileged and confidential under the FOIA rules. With respect to the disclosure of such information, Beverly shall have all the rights set forth in 45 C.F.R. § 5.65(d). Beverly shall refrain from identifying any information as trade secrets, commercial or financial information and privileged and confidential that does not meet the criteria for exemption from disclosure under FOIA.

Nothing in this CIA, or any communication or report made pursuant to this CIA, shall constitute or be construed as any waiver by Beverly of Beverly's attorney-client, work product or other applicable privileges. Notwithstanding that fact, the existence of any such privilege does not affect Beverly's obligation to comply with the provisions of this CIA.

X. Breach and Default Provisions

Beverly is expected to fully and timely comply with all of the obligations herein throughout the term of this CIA or other time frames herein agreed to.

A. *Stipulated Penalties for Failure to Comply with Certain Obligations.* As a contractual remedy, Beverly and OIG hereby agree that failure to comply with certain

obligations set forth in this CIA 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, beginning 90 days after the effective date of this CIA and concluding at the end of the term of this CIA, Beverly fails to have in place any of the following:

- a. a Compliance Officer (or functional equivalent);
- b. Audit and Compliance Committee of the Board of Directors (or its functional equivalent);
- c. Compliance Liaisons at the Group Vice President level (or functional equivalents);
- d. a Compliance Committee;
- e. a written Code of Conduct;
- f. written Policies and Procedures;
- g. a training program; and
- h. a Confidential 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 Beverly fails meet any of the deadlines to submit the Implementation Report or the Annual Reports to the OIG.

3. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day Beverly:

- a. hires or enters into a contract with an Ineligible Person after that person has been listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) (this Stipulated Penalty shall not be demanded for any time period during which Beverly can demonstrate that it did not

discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person); or

b. employs or contracts with an Ineligible Person and that person:

(i) has responsibility for, or involvement with, Beverly's business operations related to the Federal health care programs; or (ii) 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 (this Stipulated Penalty shall not be demanded for any time period during which Beverly can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person).

4. A Stipulated Penalty of \$1,500 (which shall begin to accrue on the date Beverly fails to grant access) for each day Beverly fails to grant access to the information or documentation as required in section VII of this CIA.

5. A Stipulated Penalty of \$1,000 (which shall begin to accrue 10 days after the date that OIG provides notice to Beverly of the failure to comply) for each day Beverly fails to comply fully and adequately with any obligation of this CIA. In its notice to Beverly, the OIG shall state the specific grounds for its determination that Beverly has failed to comply fully and adequately with the CIA obligation(s) at issue and a basis for Beverly to cure noncompliance before accrual of any penalty that will be deemed acceptable to the OIG.

B. Payment of Stipulated Penalties.

1. Demand Letter. Upon a finding that Beverly has failed to comply with any of the obligations described in section X.A and determining that Stipulated Penalties are appropriate, OIG shall notify Beverly by personal service or certified mail of: (a) Beverly's failure to comply; and (b) the OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

Within 10 business days of receiving the Demand Letter, Beverly shall either: (a) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties if any have accrued; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section X.D. In the event Beverly elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Beverly cures, to the 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 this CIA and shall be grounds for exclusion under section X.C.

2. Timely Written Requests for Extensions. The OIG will reasonably consider any timely written request by Beverly for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if 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 Beverly fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this section, if 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 two (2) business days after Beverly receives OIG's written denial of such request. A "timely written request" is defined as a request in writing received by OIG at least five (5) 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.

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 OIG at the address set forth in section VI.

4. Independence from Material Breach Determination. Except as otherwise noted, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for the OIG's decision that Beverly has materially breached this CIA, which

decision shall be made at the OIG's discretion and governed by the provisions in section X.C, below.

C. Exclusion for Material Breach of this CIA

1. Notice of Material Breach and Intent to Exclude. Upon a determination by OIG that Beverly has materially breached this CIA and that exclusion should be imposed, the OIG shall notify Beverly by certified mail of: (a) Beverly's material breach; and (b) 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").

2. Opportunity to Cure. Beverly shall have 30 days from the date it receives the Notice of Material Breach and Intent to Exclude to demonstrate to the OIG's satisfaction that:

a. Beverly is in full compliance with this CIA;

b. the alleged material breach has been cured; or

c. the alleged material breach cannot be cured within the 35-day period, but that: (i) Beverly has begun to take action to cure the material breach; (ii) Beverly is pursuing such action with due diligence; and (iii) Beverly has provided to OIG a reasonable timetable for curing the material breach.

3. Exclusion Letter. If at the conclusion of the 30-day period, Beverly fails to satisfy the requirements of section X.C.2, OIG may exclude Beverly from participation in the Federal health care programs. OIG will notify Beverly in writing of its determination to exclude Beverly (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section X.D, below, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other federal procurement and non-procurement programs. If Beverly is excluded under the provisions of this CIA, Beverly may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004.

4. Material Breach. A material breach of this CIA means:

a. a failure by Beverly to report a material deficiency, take corrective action and pay the appropriate refunds, as provided in section III.H;

b. repeated or flagrant violations of the obligations under this CIA that have not been cured in a timely fashion, including, but not limited to, the obligations addressed in section X.A of this CIA;

c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with section X.B above; or

d. a failure to retain and use an Independent Review Organization for review purposes in accordance with section III.D.

D. Dispute Resolution

1. Review Rights. Upon the OIG's delivery to Beverly of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this CIA, Beverly 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 this CIA. Specifically, the OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an appeal, the 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 business days after receiving the Demand Letter and the request for a hearing involving exclusion shall be made within 30 days after receiving 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 this CIA shall be: (a) whether Beverly was in full and timely compliance with the obligations of this CIA for which the OIG demands payment; and (b) the period of noncompliance. Beverly shall have the

burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ finds for the OIG with regard to a finding of a breach of this CIA and orders Beverly to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision notwithstanding that Beverly may request review of the ALJ decision by the DAB.

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 this CIA shall be: (a) whether Beverly was in material breach of this CIA; (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) Beverly had begun to take action to cure the material breach within that period, (ii) Beverly has pursued and is pursuing such action with due diligence, and (iii) Beverly provided to OIG within that period a reasonable timetable for curing the material breach. For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to the OIG. Beverly's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude Beverly upon the issuance of the ALJ's decision. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Beverly may request review of the ALJ decision by the DAB.

4. Finality of Decision. The parties to this CIA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for purposes of stipulated penalties imposed under this CIA and Beverly agrees to waive any right it may have to appeal the decision to impose stipulated penalties administratively, judicially or otherwise seek review by any court or other adjudicative forum.

5. Reviews Independent of this CIA. Nothing in this agreement shall affect the right of the Health Care Financing Administration or any other Federal or State agency to enforce any statutory or regulatory authorities with respect to Beverly's

compliance with applicable Federal and State health care program requirements or Beverly's rights to pursue its statutory, regulatory or other legal remedies with respect to such actions.

XI. Effective and Binding Agreement

Consistent with the provisions in the Settlement Agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, Beverly and OIG agree as follows:

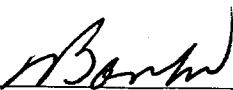
A. This CIA shall be binding on the successors, assigns, and transferees of Beverly (except that the obligations of this CIA shall not apply to facilities that Beverly or a Beverly successor does not own or operate);

B. This CIA shall become final and binding on the date the final signature is obtained on the CIA and shall supersede and replace any other Corporate Integrity Agreements obligating Beverly or any of its facilities at the time of execution of this CIA;

C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and

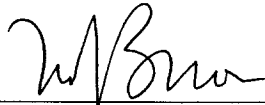
D. The undersigned Beverly signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

ON BEHALF OF BEVERLY



David Banks
Chief Executive Officer
Beverly Enterprises, Inc.

12/2/99
DATE



Mark Biros, Esq.
Proskauer Rose LLP
1233 20th Street, NW
Suite 800
Washington, DC 20036-2396

December 1, 1999

DATE

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**



LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services

2/3/00

DATE

**AMENDMENT TO CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
BEVERLY ENTERPRISES INC.**

I. PREAMBLE AND SCOPE OF AMENDMENT

On February 3, 2000, the Office of Inspector General (“OIG”) of the Department of Health and Human Services and Beverly Enterprises Inc. (“Beverly”) entered into a Corporate Integrity Agreement (“CIA”). This Amendment supersedes the January 17, 2003 Amendment to the CIA.

II. TERM AND SCOPE OF THE AMENDMENT

A. The period of the compliance obligations assumed by Beverly under this Amendment shall be coterminous with the CIA (unless otherwise specified). Notwithstanding the foregoing, upon completion of the third year of this Amendment, the OIG, in its sole discretion, may waive Beverly’s obligation under Section III.D *infra* to retain an Independent Monitor for the remaining term of the Amendment. The effective date of this Amendment shall be the date on which the final signatory executes this Amendment (“Amendment Effective Date”). The “Reporting Period” shall be the calendar year. The first Reporting Period shall be the period beginning with the Amendment Effective Date through December 31, 2004.

B. The scope of this Amendment shall be governed by the following definitions:

1. “Covered Facility,” includes all the nursing home facilities that are licensed, operated, directed, or administered by Beverly or in which Beverly has an ownership or control interest, as defined by 42 U.S.C. § 1320a-3(a)(3).

2. “Amendment Covered Persons” includes the employees, contractors and agents who work at a Covered Facility who:

- (a) perform patient care or resident care duties;
- (b) make assessments of patients or residents that affect treatment decisions or reimbursement;
- (c) perform billing, coding, or assessment functions described in Section III.A.4. of this Amendment;
- (d) perform management oversight on staffing, patient care, resident care, reimbursement, or the CIA and this Amendment; or
- (e) perform any function that relates to or is covered by the CIA and this Amendment.

Notwithstanding the above, any non-employee who is hired on a part-time or temporary basis and who works less than 160 hours per year in a Covered Facility or any non-employee private caregivers and/or attending physicians hired by any resident or the family or friends of any resident of a Covered Facility regardless of the hours worked per year in a Covered Facility are not Amendment Covered Persons.

III. CORPORATE INTEGRITY OBLIGATIONS

Beverly shall ensure that its compliance program required by the CIA includes the following elements.

A. Compliance Officer, Committees, and Internal Audit and Review Functions.

1. *Compliance Officer.* In addition to his or her other duties, the Compliance Officer appointed pursuant to the CIA shall also provide reasonable assurance that quality of care problems are being appropriately addressed and corrected.

2. Quality Compliance Committees.

- (a) Corporate Quality Committee. Beverly has established a Corporate Quality Council (“Corporate Quality Committee”). The purpose of the Corporate Quality Committee is to monitor and improve quality of care at Beverly’s nursing homes. At a minimum, the Corporate Quality Committee includes the

Compliance Officer, the Corporate Medical Director, the Chief Operating Officer of the Nursing Home subsidiary, the Sr. Vice President of Professional Services, representatives from Beverly's Regions, and any other appropriate officers or individuals necessary to thoroughly implement the requirements of this Amendment that relate to quality of care in the Covered Facilities.

- (b) Regional Quality Councils. Beverly has established Regional Quality Councils ("Regional Quality Compliance Committees"). The purpose of the Regional Quality Compliance Committees is to address issues concerning quality of care at Beverly's nursing homes in each of its Regions. At a minimum, the Regional Quality Compliance Committee includes the Regional Vice President of Operations, the Regional Director of Professional Services, and any other appropriate officers or individuals necessary to thoroughly implement the requirements of this Amendment that relate to quality of care in the Covered Facilities. For each Regional Quality Council meeting in the Region in which the covered facilities are located, there shall be senior representatives from the Covered Facilities, chosen on a rotating and random basis, to report to the committee on the adequacy of care being provided at their applicable Covered Facility.

3. *Board of Directors' Committee*. Beverly currently has a Quality Committee as part of its Board of Directors to provide oversight on quality of care issues ("Quality Assurance Monitoring Committee"). This committee shall continue to:

- (a) review the adequacy of Beverly's system of internal controls, quality assurance monitoring, and patient care;
- (b) ensure that Beverly's response to state, Federal, internal, and external reports of quality of care issues is complete, thorough, and resolves the issue(s) identified; and
- (c) ensure that Beverly adopts and implements policies and procedures that are designed to ensure that each individual cared for at a Beverly facility

receives the highest practicable physical, mental and psychosocial level of care attainable. The individuals who serve on this committee shall be readily available to the Compliance Officer, the Sr. Vice President of Professional Services, and the Monitors to respond to any issues or questions that might arise. When new members are appointed, or the responsibilities or authorities of the Board committee are substantially changed, Beverly shall notify the OIG, in writing, within fifteen (15) days of such a change.

4. *Quality Reviews.* Beverly currently performs Quality reviews under the Beverly Quality System. The Quality Reviews (known as the Facility Performance Assessments), including quality review follow-ups, are described in a 2003 notebook, which Beverly has previously provided to the OIG. Beverly shall continue to conduct Quality Reviews in a manner that devotes at least equal resources to performing the function of quality review at the covered facilities as that described in the 2003 notebook. Beverly shall notify the OIG within fifteen (15) days of any material changes to the form, manner, or frequency of these Quality Reviews. The Quality Reviews shall:

- a. make findings of whether the patients and residents at Covered Facilities are receiving the quality of care and quality of life consistent with basic care, treatment and protection from harm standards, including but not limited to, 42 C.F.R. Parts 482 and 483 and any other Federal and state statutes, regulations, and directives;
- b. make findings of whether the policies and procedures mandated by this Amendment are created, implemented, and enforced;
- c. make findings of whether training is performed in accordance with this Amendment;
- d. make findings of whether hotline complaints are appropriately investigated;
- e. make findings of whether the reporting obligations are complied with in accordance with this Amendment; and
- f. make findings of whether corrective action plans are timely created, implemented, and enforced.

Notwithstanding the above, the obligations and findings required by Sections III.A.4(b), (c), (d), and (e) above may be made by Beverly's Internal Audit function or any other Beverly review function whose primary responsibility is not to conduct Quality Reviews under the Beverly Quality System.

B. Written Standards.

1. *Policies and Procedures.* Beverly has established written Policies and Procedures regarding its Compliance Program and its compliance with relevant Federal and state requirements, including, but not limited to, the requirements of Federal health care programs. Beverly shall continue to assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. The Policies and Procedures shall be available to the OIG upon request. To the extent not already accomplished, Beverly shall make the relevant portions of its Policies and Procedures available to the appropriate Amendment Covered Persons within 120 days after the Effective Date of this Amendment. Compliance staff or supervisors shall continue to be available to explain any and all Policies and Procedures. Within 120 days after the Effective Date of this Amendment, Beverly shall review and analyze its Policies and Procedures to ensure that, at a minimum, such Policies and Procedures specifically address and/or include:

- a. Measures designed to ensure that Beverly fully complies with applicable portions of Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and all regulations, written directives and guidelines promulgated pursuant to these statutes, including 42 C.F.R. 424 and 483, and any other applicable laws that address quality of care in nursing facilities;
- b. Measures designed to ensure that Beverly complies with all applicable requirements of Medicare's Prospective Payment System ("PPS") for long term care facilities, including, but not limited to: ensuring the accuracy of the clinical data required under the Minimum Data Set ("MDS") as specified by the Resident Assessment Instrument User's Manual; ensuring that facilities are appropriately and accurately using the current Resource Utilization Groups ("RUG") classification system; and ensuring the accuracy of billing and cost report preparation policies and procedures;

- c. Measures designed to ensure the provision of coordinated interdisciplinary care to long term care residents, including, but not limited to the following areas addressed in 42 C.F.R. 483: resident assessment and care planning; nutrition; disease specific care; wound care; infection control; appropriate drug therapies; appropriate mental health services; provision of basic care needs, including the provision of Activities of Daily Living (“ADL”); incontinence care; resident rights; physical and chemical restraint use; therapy services; quality of life, including accommodation of needs and activities; assessment of resident competence to make treatment decisions; and professional services;
- d. Measures designed to ensure that staffing needs are decided first and foremost upon achieving the level of care for Beverly’s patients and residents required by Federal and state laws, including, but not limited to, 42 C.F.R. § 483.30 (nursing facilities);
- e. Measures that specify that if the director of nursing (or other person who is making staffing decisions at the facilities) disagrees with a staffing determination that is not in compliance with state or federal regulations or the CIA or this Amendment and that significantly affects patient care made by the Administrator or other individuals at the regional or corporate level, and is unable to resolve the issue through the normal chain of responsibility, then that person must promptly call the hotline and the Monitor. Nothing in this subsection prohibits such person from contacting the hotline or Monitor without first going through the normal chain of responsibility;
- f. Measures designed to ensure compliance with the completion of accurate clinical assessments as required by applicable Federal law;
- g. Measures designed to inform Covered Persons of the staffing requirements of Federal and state law;
- h. Measures to inform Covered Persons during orientation and during other training required by this Amendment that staffing levels are a critical aspect of patient and resident care, and if any person has a concern about the level of staffing that there are many avenues available to report such concerns, including, but not limited to, the Administrator, the Hotline (as described in Section III.E of the CIA), individuals at the district, regional, or corporate level, or directly to the Compliance Officer or Monitor;

- i. Measures designed to minimize the use of individuals at any Beverly facility who are from a temporary agency or not employed by Beverly (not including those individuals who are included in the definition of Covered Persons) and measures designed to create and maintain a standardized system to track the number of individuals at each facility who fall within this category so that the number/proportion of or changing trends in such staff can be adequately identified by Beverly and/or the Monitor;
- j. Measures designed to ensure that all residents and patients are served in the least restrictive environment and most integrated setting appropriate to their needs;
- k. Measures designed to promote adherence to the compliance and quality of care standards set forth in the applicable statutes, regulations, and in this Amendment, by including such adherence as a significant factor in determining the compensation to Administrators of the facilities, and the individuals responsible for such compliance at the regional, and corporate level;
- l. Measures designed to ensure cooperation by Beverly and its employees, contractors, and agents with the Monitor in the performance of his or her duties as set forth *infra*;
- m. Measures designed to ensure that compliance issues identified internally (*e.g.*, through reports to supervisors, hotline complaints, internal audits, patient satisfaction surveys, CHSRA quality indicators, facility specific key indicators, or internal surveys) or externally (*e.g.*, through CMS or state survey agency reports, consultants, audits performed by the Independent Review Organization, or Monitor's reports) are promptly and appropriately investigated and, if the investigation substantiates compliance issues, Beverly assesses the nature and scope of the problems, implements appropriate corrective action plans, and monitors compliance with such plans;
- n. Measures designed to effectively collect and analyze staffing data, including staff-to-resident ratio and staff turnover;
- o. Measures designed to ensure that individuals and entities who fall within the ambit of the Covered Contractor definition are appropriately supervised to

ensure that the Covered Contractor is acting within the parameters of Beverly's Policies and Procedures and the requirements of Federal health care programs;

p. Measures designed to ensure that appropriate and qualified individuals perform the internal quality reviews;

q. Non-retaliation policies and methods for employees to make disclosures or otherwise report on compliance issues through the Disclosure Program required by Section III.E of the CIA;

r. Disciplinary guidelines to reflect the Code of Conduct requirements as specified in Section III.B.1 of the CIA;

s. Measures designed to ensure that Provider has a system to require and centrally collect reports relating to incidents, accidents, abuse and neglect. The reports required under this system shall be of nature to allow the Quality Assurance Committees meaningful information to be able to determine: 1) if there is a quality of care problem; and 2) the scope and severity of the problem; and

t. Measures designed to ensure that residents and patients are discharged only for the reasons authorized by and in accordance with the procedures established by applicable law and not discharged for financial reasons unless authorized by law.

Beverly shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. The Policies and Procedures will be available to OIG upon request.

C. Training and Education.

1. *Training in Covered Facilities.* At least annual training conducted in Covered Facilities will continue to be conducted in the same manner as exists as of the date of this Amendment. Such training includes, at a minimum, training covering the Policies and Procedures set forth in section B.1. above.

2. *Additional Training.* In addition, each facility shall conduct periodic training on an "as needed" basis (but at least semi-annually) on those quality of care issues

identified by the Board of Directors Committee, the Compliance Committee or through other means as set forth below. In determining what training should be performed, these Committees will review and consider the recommendations of the Monitor, the complaints received, satisfaction surveys, staff turnover data, any state or Federal surveys, including those performed by the Joint Commission on Accreditation of Healthcare Organizations (“JCAHO”) or other such private agencies, any internal surveys, and the CHSRA quality indicators. Such training will be for the length of time necessary to teach the subject matter. Such training will be provided to all Covered Persons at the facility who are responsible for patient or resident care, or whose job function allows them to contribute to the correction of the alleged deficiency. Beverly shall implement mechanisms to evaluate the individual’s competence with respect to the training received.

Training materials shall be made available to OIG upon request. Persons providing the training must have sufficient expertise in the subject area.

3. *Certification.* An attendance log shall document the attendance of each person who is required to attend the training. The member of the Compliance Department or other person providing the training shall certify the accuracy of the attendance log. The attendance log shall specify the type of training received and the date received. Beverly shall retain the attendance logs and certifications, and make all of these logs, certifications, and materials available to OIG upon request.

D. Independent Monitor.

Pursuant to the previous Amendment to the CIA, Beverly retained the Long Term Care Institute (LTCI) as the appropriately qualified monitoring team (the "Monitor"), approved by the OIG. Within thirty (30) days after the Effective Date of this Amendment, Beverly shall revise its contract with LTCI to enable LTCI to continue to serve as the Monitor pursuant to this Amendment. The Monitor may retain additional personnel, including, but not limited to, independent consultants, if needed to help meet the Monitor's obligations under this Amendment. Beverly shall be responsible for all fees and expenses incurred by the Monitor, including, but not limited to, travel costs, consultants, administrative personnel, office space and equipment, or additional personnel. The Monitor shall charge a reasonable amount for his or her fees and expenses, pursuant to a budget to be agreed upon by the Monitor, Beverly and the OIG. Any dispute regarding the amount or the budget will be resolved by the OIG. As a condition to retaining the Monitor, Beverly shall require the Monitor to enter into a subcontract with an individual or entity, approved by the OIG, that has the requisite expertise, capacity and access to MDS data directly from CMS to perform quarterly Quality Indicator data analysis reports of the type described in the attached Appendix # 1. Failure to pay the Monitor within thirty (30) calendar days of submission of its invoices for services previously rendered shall constitute a breach of the CIA and this Amendment and shall subject Beverly to one or more of the remedies set forth in Section VI *infra*. The Monitor may be removed solely at the discretion of the OIG. If the Monitor resigns or is removed for any reason prior to the termination of the Amendment, Beverly shall appoint another Monitor, after approval by the OIG, with the same functions and authorities.

1. The Monitor shall be responsible for assessing the effectiveness, reliability and thoroughness of the following at or with regard to Covered Facilities:

a. Beverly's Quality of Care internal quality control systems, including, but not limited to, whether the systems in place to promote quality of care and to respond to quality of care issues are acting in a timely and effective manner; whether the communication system is effective, allowing for accurate information, decisions, and results of decisions to be transmitted to the proper individuals in a timely fashion; and whether the training programs are effective and thorough;

b. Beverly's response to quality of care issues at Covered Facilities, which shall include an assessment of:

- (1) Beverly's ability to identify the problem;
- (2) Beverly's ability to determine the scope of the problem, including, but not limited to whether the problem is isolated or systemic;
- (3) Beverly's ability to create a corrective action plan to respond to the problem;
- (4) Beverly's ability to execute the corrective action plan; and
- (5) Beverly's ability to evaluate whether the assessment, corrective action plan and execution of that plan was effective, reliable, and thorough.

c. Beverly's development and implementation of corrective action plans and the timeliness of such actions; and

d. Beverly's proactive steps to ensure that each patient and resident in a Covered Facility receives care in accordance with: (1) basic care, treatment and protection from harm standards; (2) the rules and regulations set forth in 42 C.F.R. Parts 482 and 483; (3) state and local statutes, regulations, and other directives or guidelines; and (4) the policies and procedures adopted by Beverly and set forth in this Amendment.

2. *Access.* The Monitor shall have access to:

- a. Covered Facilities, at any time and without prior notice;
- b. The following types of documents: (1) the CMS quality indicators (for Covered Facilities); (2) internal or external surveys or reports applicable to Covered Facilities; (3) Beverly's hotline

complaints regarding Covered Facilities; (4) resident or patient satisfaction surveys for each Covered Facility; (5) staffing data for each Covered Facility in the format requested by the Monitor, including but not limited to reports setting forth the staff to patient ratios, temporary staffing levels, and staff turnover data, as well as reports of any facility where temporary agency staff constitutes more than ten percent of the nursing and direct care staff; (6) incident, accident, abuse, neglect or death reports for each Covered Facility; (7) reports of incidents involving a patient or resident that prompt a full internal investigation at a Covered Facility; (8) patient or resident records for Covered Facilities; (9) financial data for Covered Facilities; (10) self-evaluative reports including, but not limited to, those from quality assurance committees, applicable to Covered Facilities; and (11) any other pre-existing data, including the reconfiguring of existing data that the Monitor may determine relevant to fulfilling the duties required under this Amendment in the format requested by the Monitor, to the extent practicable; and

c. Immediate access to Covered Facilities' current patients, residents, and staff subject to: (1) their clinical condition; and (2) their consent to conduct interviews outside the presence of Beverly supervisory staff or counsel, provided such interviews are conducted in accordance with all applicable laws and the rights of such individuals.

3. *Beverly's Obligations.* Beverly shall:

a. Not impede the Monitor's access to its facilities (pursuant to the provisions of this Amendment) and shall provide any requested documentation within the time frame specified by the Monitor, subject to any extensions and modifications requested by Beverly and granted by the Monitor (the Monitor shall balance the circumstances of the situation with the burden on Beverly when making document requests);

b. Assist in contacting and arranging interviews of Amendment Covered Persons, and not impede the cooperation by such individuals;

- c. Provide access to current residents or patients and contact information for their families and guardians, in a manner consistent with the rights of such individuals under state or Federal law, and not impede their cooperation;
- d. Provide the last known contact information for former employees, contractors, and agents, and not impede the cooperation from such individuals, including but not limited to, refraining from placing any provision in agreements that would limit such cooperation;
- e. Provide the last known contact information for former residents, patients, their families, or guardians consistent with the rights of such individuals under state or Federal law, and not impede their cooperation;
- f. Address any written recommendation made by the Monitor either by substantially implementing the Monitor's recommendations or by explaining in writing why it has elected not to do so;
- g. Pay the Monitor's bills for Monitor's Costs within 30 days of receipt. While Beverly must pay all the Monitor's bills within 30 days, Beverly may bring any disputed Monitor's Costs or bills to OIG's attention for resolution by OIG;
- h. Not sue or otherwise bring any action against the Monitor related to any findings made by the Monitor or related to any exclusion or other sanction of Beverly under this Agreement; provided, however, that this clause shall not apply to any suit or other action based solely on the dishonest or illegal acts of the Monitor, whether acting alone or in collusion with others; and
- i. When requested by the Monitor, provide the Monitor a report of each of the following occurrences that may have happened during the time period requested by the Monitor:

- (1) Deaths or injuries related to the use of restraints;

- (2) Deaths or injuries related to the use of psychotropic medications;
- (3) Suicides;
- (4) Deaths or injuries related to abuse or neglect (as defined in the applicable Federal guidelines); and
- (5) Any other incident that involves or causes actual harm to a resident when such incident prompts a full internal investigation.

Each such report shall contain the full name and date of birth of the resident, the date of death or incident, and a brief description of the events surrounding the death or incident.

4. *The Monitor's Obligations.* The Monitor shall:

- a. Respect the legal rights, privacy, and dignity of all Amendment Covered Persons, residents, and patients;
- b. Where independently required by applicable law or professional licensing standard, to report any finding to an appropriate regulatory or law enforcement authority, simultaneously submit copies of such reports to the OIG and to Beverly;
- c. At all times act reasonably in connection with its duties under the Amendment including when requesting information from Beverly;
- d. Simultaneously provide semi-annual reports to Beverly and OIG concerning the findings made to date;
- e. Submit bills to Beverly on a consolidated basis no more than once per month, and submit an annual summary representing an accounting of its costs throughout the year to Beverly and to OIG. Beverly shall have the opportunity to review such bills and bring any issue of disputed bills or costs to the attention of OIG for resolution

by OIG. The Monitor shall submit to Beverly an annual report representing an accounting of its costs throughout the year;

f. Not be bound by any other private or governmental agency's findings or conclusions, including, but not limited to, JCAHO, CMS, or the state survey agency. Likewise, such private and governmental agencies shall not be bound by the Monitor's findings or conclusions. The Monitor's reports shall not be the sole basis for determining deficiencies by the state survey agencies. The parties agree that CMS and its contractors shall not introduce any material generated by the Monitor, or any opinions, testimony, or conclusions from the Monitor as evidence into any proceeding involving a Medicare or Medicaid survey, certification, or other enforcement action against Beverly, and Beverly shall similarly be restricted from using material generated by the Monitor, or any opinions, testimony, or conclusions from the Monitor as evidence in any of these proceedings. Nothing in the previous sentence, however, shall preclude the OIG or Beverly from using any material generated by the Monitor, or any opinions, testimony, or conclusions from the Monitor in any action under the CIA or this Amendment or pursuant to any other OIG authorities or in any other situations not explicitly excluded in this subsection subject to the confidentiality provisions set forth in Section V. of this Agreement;

g. Abide by the legal requirements of Beverly's facilities to maintain the confidentiality of each resident's personal and clinical records, and to maintain confidential and not to disclose the records of Beverly's Corporate Compliance Committee, Corporate, Regional or District Quality Councils, Facility QAA Committees and self-evaluative reports, including, but not limited to, those from, Internal Audit, the Hotline, medical review committees, if any, quality assurance committees or peer review committees, if any. See 42 C.F.R. §§ 483.10 and 483.75(o)(3)). Nothing in the prior sentence, however, shall limit or affect the Monitor's obligation to provide information, including information from patient and resident clinical records, to the OIG, and, when legally or professionally required, reporting to other agencies;

- h. Except to the extent required by law, maintain the confidentiality of any proprietary financial and operational information, processes, procedures and forms obtained in connection with its duties under this Amendment and not comment publicly concerning its findings except to the extent authorized by the OIG;
- i. Visit each Covered Facility as often as the Monitor believes it necessary to perform its functions;
- j. Where appropriate, communicate requests for access, documents or other information to the Compliance Officer; and
- k. When possible, identify the criteria under which it intends to assess Beverly's or individual Covered Facilities' activities as set forth herein and communicate those criteria to Beverly in advance of its assessments.

5. *Miscellaneous Provisions*

- a. The Monitor may confer and correspond with Beverly and OIG on an *ex parte* basis at any time.
- b. If, after consulting with Beverly, the Monitor has concerns about corrective action plans that are not being enforced or systemic or repeated problems that could impact Beverly's ability to render quality care to its patients and residents, the Monitor shall: (A) report such concerns in writing to the OIG, which in its discretion shall relay such concerns to the Consortium (the Consortium consists of representatives of OIG, the Department of Justice (DOJ) and CMS); and (B) provide notice and a copy of the report to the Compliance Officer and the Board Committee. Beverly shall be provided an opportunity to respond to the Consortium concerning any such report. The Consortium shall seek to resolve any such dispute between the Monitor and Beverly prior to OIG seeking any remedies pursuant to the terms of the CIA and this Amendment;
- c. The Monitor shall not control, manage or operate Beverly.

E. Reporting of Material Deficiencies. The definition of Material Deficiency set forth in Section III.H.4(iii) of the CIA and Beverly's reporting obligations set forth in Section III.H.2 of the CIA are hereby amended to provide that Beverly no longer must report occurrences or instances meeting the definition of Material Deficiency set forth in Section III.H.4(iii) if those occurrences or instances occur in a Covered Facility.

IV. ANNUAL REPORTS

A. Annual Report. Each Annual Report required by the CIA shall include, in addition to the information required by Section V.B of the CIA, the following:

1. any change in the identity or position description of individuals in positions described in Section III.A of this Amendment, a change in any of the committees' structure or charter, or any change in the Quality Review program;
2. a certification by the Compliance Officer that, unless the non-compliance is clearly and explicitly described in the Annual Report:
 - a. all Covered Persons have completed the training and executed the certification required by Section III.C; and
 - b. Beverly has effectively implemented all plans of correction related to problems identified under this Amendment Beverly's Compliance Program, or Quality Reviews.
3. notification of any changes or amendments to the Policies and Procedures required by Section III.B of this Amendment and the reasons for such changes (*e.g.*, change in contractor policy);
4. a summary of the Covered Facilities reviewed pursuant to Section III.A.4, a summary of the findings of such review, and a summary of the corrective action taken under the Quality Review Program; and
5. Beverly's response/corrective action plan to any issues raised by the Monitor.

B. Certifications. The Annual Reports shall include a certification by Beverly's Compliance Officer, under penalty of perjury, that: (1) Beverly is in compliance with all of the requirements of this Amendment and the CIA (unless the non-compliance is clearly and explicitly described in the Implementation or Annual Report), to the best of his or her knowledge; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful. Each Report shall also include a certification the chair of the appropriate committee(s) of Beverly's Board of Directors certifying that the committee(s)' members have reviewed the Annual Report.

V. DISCLOSURES

The OIG will follow all applicable Federal laws concerning privacy and confidentiality, including the Federal Privacy Act, 5 U.S.C. § 552a, to the greatest extent allowed by law.

Consistent with HHS's Freedom of Information Act ("FOIA") procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify Beverly prior to any release by OIG of information submitted by Beverly pursuant to its obligations under this Amendment or the CIA and identified upon submission by Beverly as trade secrets, commercial or financial information and privileged and confidential under the FOIA rules. Beverly shall refrain from identifying any information as trade secrets, commercial, or financial information and privileged and confidential under the FOIA rules. Beverly shall refrain from identifying any information as trade secrets, commercial, or financial information and privileged and confidential that does not meet the criteria for exemption from disclosure under FOIA. With respect to the disclosure of information, Beverly shall have the rights set forth in 45 C.F.R. § 5.65(d). The OIG shall seek to protect confidential information under the FOIA rules to the greatest extent allowed by law. The OIG shall provide the pre-disclosure notice required pursuant to 45 C.F.R. § 5.65(d) to the Compliance Officer at the address provided in Section VI of the CIA.

One of the purposes of the original CIA and this Amendment is to assist and monitor Beverly to ensure that Beverly develops, revises, and maintains effective internal controls that promote adherence to applicable Federal and state laws and the program requirements of Federal and state health care programs. Communication, record-keeping, reporting and frank and open communication by and between the OIG and Beverly, its employees and its Compliance Officer are essential to meeting the OIG's expectations and the purpose of the CIA and this Amendment.

Nothing in this Amendment or the CIA, or any communication or report made pursuant to this Amendment or the CIA, shall constitute or be construed as a waiver by Beverly or Beverly's attorney-client, work product, peer review, or other applicable privileges, including, without limitation, the protections contained in 42 C.F.R. § 473.75(o). Notwithstanding that fact, the existence of any such privilege does not affect Beverly's obligations to comply with the provisions of the CIA or this Amendment or to provide documents and information to the OIG pursuant to the CIA or this Amendment.

VI. BREACH AND DEFAULT PROVISIONS

Beverly is expected to fully and timely comply with all of the obligations herein throughout the term of this Amendment or other time frames herein agreed to.

- A. Specific Performance of Amendment Provisions. If OIG determines that Beverly is failing to comply with a provision or provisions of this Amendment and decides to seek specific performance of any of these provisions, OIG shall provide Beverly with prompt written notification of such determination ("Noncompliance Notice").
- B. Opportunity to Cure. Beverly will have thirty five (35) days from receipt of the Noncompliance Notice either to demonstrate to the OIG's satisfaction that: (1) Beverly is in full compliance with this Amendment; (2) the alleged failure to comply has been cured; or (3) the alleged non-compliance cannot be cured within the thirty-five (35) day period but that: (i) Beverly has begun to take action to cure the non-compliance; (ii) Beverly is pursuing such action with due diligence; and (iii) Beverly has provided to the OIG a reasonable timetable for curing the non-compliance; or to reply in writing that Beverly disagrees with the determination of noncompliance and request a hearing before an HHS Administrative Law Judge ("ALJ"), pursuant to the provisions set for in Section VI.E of this Amendment. This purpose of the hearing is to determine whether Beverly has failed to comply with the Amendment and whether Beverly shall be required to implement the particular provisions at issue.
- C. Stipulated Penalties for Failure to Comply with Certain Obligations. In addition to the Stipulated Penalty provisions of the original CIA, as a contractual remedy, Beverly and OIG agree that failure to comply with certain obligations set forth in this Amendment may lead to the imposition of the

following monetary penalties (“Stipulated Penalties”) in accordance with the following provisions: A Stipulated Penalty of \$1,000 (which shall begin to accrue ten (10) days after the date OIG provides notice to Beverly of the failure to comply) for each day Beverly fails to comply fully and adequately with an obligation of this Amendment that is widespread or systemic in nature or reflective of a pattern or practice. In its notice to Beverly, the OIG shall state the specific grounds for its determination that Beverly has failed to comply fully and adequately with the CIA or Amendment obligation(s) at issue. The “Opportunity to Cure” provisions of Section VI.B. above apply to this Section as though fully set forth herein.

D. Exclusion for Material Breach of the CIA

Material Breach. In addition to the definition of Material Breach set forth in the original CIA, Material Breach also means:

- a. a failure to address concerns raised by the Monitor as set forth in Section III.D.1. above or otherwise meet an obligation under this Amendment that has a material impact on the quality of care rendered to any residents or patients of Beverly;
- b. a failure to retain and use the Monitor in accordance with Section III.D.

The notice and cure provisions of Section X.C. of the CIA apply equally to this Section VI.D. of the Amendment as though fully set forth herein.

E. Dispute Resolution

1. *Review Rights.* Upon the OIG's delivery to Beverly of its Noncompliance Notice, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligations of this Amendment, Beverly shall be afforded certain review rights comparable to those set forth in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the specific performance, Stipulated Penalties, or exclusion sought pursuant to this Amendment. Specifically, an action for specific performance shall be subject to review by an ALJ and, in the event of an appeal, the 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), a request for a hearing involving specific performance shall be made within thirty (30) days of the date of the Demand Letter.

2. *Specific Performance 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 specific performance of Amendment provisions shall be: (a) whether, at the time specified in the Noncompliance Notice, Beverly was in full and timely compliance with the obligations of this Amendment for which the OIG seeks specific performance; and (b) whether Beverly failed to cure. Beverly shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ finds for the OIG, Beverly shall take the actions OIG deems necessary to cure within twenty (20) days after the ALJ issues such a decision notwithstanding that Beverly may request review of the ALJ decision by the DAB.

3. *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 this Amendment agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this Amendment, and Beverly agrees to waive any right it may have to appeal the decision administratively, judicially or otherwise seek review by any court or other adjudicative forum.

4. *Review by Other Agencies.* Nothing in this Amendment shall affect the right of CMS or any other Federal or State agency to enforce any statutory or regulatory authorities with respect to Beverly's compliance with applicable Federal and state health care program requirements.

VII. EFFECTIVE AND BINDING AGREEMENT

A. This Amendment shall be binding on the successors, assigns, and transferees of Beverly, except that facilities and entities which Beverly subsequently divests shall be excused from the obligations under the Amendment upon the assignment of a provider agreement or the disposition of assets to an entity unrelated to Beverly.

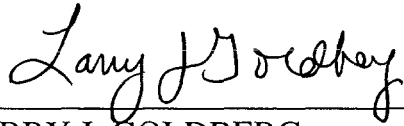
B. All other sections of Beverly's original CIA will remain unchanged and in effect and applicable to this Amendment, unless specifically amended upon the prior written consent of the OIG.

C. The undersigned Beverly signatories represent and warrant that they are authorized to execute this Amendment. The undersigned OIG signatory represents that he is signing this Amendment in his official capacity and that he is authorized to execute this Amendment; and any modifications to this Amendment shall be made only with the prior written consent of the parties to the CIA and this Amendment.

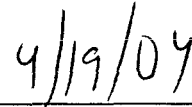
D. The Effective Date of this Amendment shall be the date the last signatory signs the Amendment.

E. The original CIA and this Amendment are by and between the parties hereto and for their sole benefit and not for the benefit of any third parties. Notwithstanding any language in the original CIA or this Amendment, neither the original CIA nor this Amendment shall create or be construed or interpreted to create any benefit for any person not a party to the original CIA or this Amendment or create any right or cause of action in or on behalf of any person (including without limitation any resident, patient or customer of Beverly) other than the parties hereto.

ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

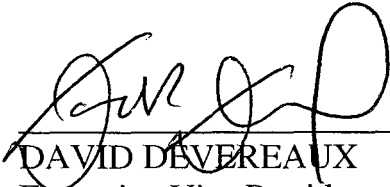


LARRY J. GOLDBERG
Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services



DATE

ON BEHALF OF BEVERLY ENTERPRISES INC.



DAVID DEVEREAUX

Executive Vice President and Chief Operating Officer

4/6/04

DATE

Appendix # 1 - Data Analysis Subcontract Description

Below is a description of the kinds of reports to be provided under the Monitor's subcontract with a data analysis expert, as required by section III.D of the Amendment to the Beverly CIA.

a. Facility Reports: a summary report for each facility covered by the Amendment, showing facility-level quality indicator (QI) values and information on the MDS assessments underlying these values. The reports will provide the facility's QI ratios as well as information regarding the placement of these values within the distribution of results for appropriate comparison groups. Initially, two comparison groups will be available. The first comparison group will be all nursing facilities within the subcontractor's MDS assessment database. The second group will be all nursing facilities within the Provider Group. The subcontractor may make additional comparison groups available if such groups can be readily identified using the facility identification codes within the subcontractor's MDS assessment database.

b. Resident Reports: a resident-level report showing which QI numerators were triggered by each resident in the Facility Report tabulation.

c. Database Extracts: a facility-level database table of QI values for the Provider Group. This extract will be produced quarterly by the subcontractor and mailed to the Monitor on CD, along with a printed summary of the table contents. These tables will be in a format suitable for use in spreadsheets and/or simple database applications to allow the monitor to manipulate/rearrange the data supporting the QI reports.

d. Documentation: The subcontractor will provide the Monitor with a QI User Guide, which will describe the report format and contents, provide QI definitions in terms of the underlying MDS assessment items, and outline the QI tabulation process.

e. QI Report Distribution: The Facility and Resident reports will be produced quarterly by the subcontractor.

f. QI Analyses: Throughout the term of this subcontract, the subcontractor will analyze the available QI information relating to the Provider Group in an effort to refine and expand the information provided to the Monitor.