

**CORPORATE INTEGRITY AGREEMENT**  
**BETWEEN THE**  
**OFFICE OF INSPECTOR GENERAL**  
**OF THE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**AND**  
**NHC/OP, L.P.**  
**NATIONAL HEALTHCARE CORPORATION AND**  
**NATIONAL HEALTHCARE CORPORATION, D/B/A NHC HEALTHCARE, JOPLIN**

**I. PREAMBLE**

NHC/OP, L.P., National HealthCare Corporation, and National HealthCare Corporation, d/b/a NHC HealthCare, Joplin (collectively “Joplin”) 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 its directors, officers, employees, physicians and other health care professionals, and contractors and agents 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”). Joplin’s compliance with the terms and conditions in this CIA shall constitute an element of Joplin’s present responsibility with regard to participation in the Federal health care programs.

Joplin acknowledges its accountability for the health and safety of its patients and residents. The employees, contractors, and agents covered under this CIA are those who: (1) perform patient care or resident care duties; (2) make assessments of patients or residents that affect treatment decisions or reimbursement; (3) make decisions or provide oversight about staffing, patient care, resident care, reimbursement, policies and procedures, or this CIA; or (4) perform any function that relates to or is covered by this CIA (hereinafter, “Covered Persons”).

On November 15, 2000 National HealthCare Corporation (“NHC”) entered into a five-year CIA with the OIG that applied to its nationwide operation of nursing homes (hereinafter, “NHC CIA”). The NHC CIA required that NHC establish and/or maintain a corporate compliance program with, among other things, the following elements: Compliance Officer, Compliance Committee, Code of Conduct, Policies and Procedures,

Training and Education Program, Review Procedures, a Confidential Disclosure Program, and an Ineligible Person screening mechanism. Where appropriate, this CIA incorporates by reference certain provisions of the NHC CIA. For the duration of this CIA, Joplin shall continue to be subject to the requirements of the NHC CIA, to the extent applicable. The lack of reference to a particular NHC CIA provision in this Joplin CIA does not in any way change or obviate the application, to the extent it is applicable, of such NHC CIA provision to Joplin.

## **II. TERM OF THE CIA**

The period of the compliance obligations assumed by Joplin under this CIA shall run from the effective date of this CIA (unless otherwise specified) and expire on the same date as the expiration of the NHC CIA. The effective date of this CIA shall be the date on which the final signatory of this CIA executes the CIA. Sections VI, VII, VIII, IX, and X shall remain in effect until Joplin submits all information required by OIG as part of the final Annual Report

## **III. CORPORATE INTEGRITY OBLIGATIONS**

Joplin shall establish a compliance program that includes the following elements.

### **A. Compliance Officer, Liaison, Committees, and Internal Audit or Review Functions.**

1. *Compliance Officer and Liaison.* For the duration of this CIA, consistent with the terms of the NHC CIA, Joplin's Compliance Officer shall be the NHC Corporate Compliance Officer, whose obligations and requirements are set forth in the NHC CIA. Additionally, within 90 days of the effective date of this CIA Joplin shall establish a Quality Assurance Compliance Liaison ("Q/A Compliance Liaison"), who shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA that relate to quality of care at Joplin and to ensure that quality of care problems at Joplin are being appropriately addressed and corrected. The Q/A Compliance Liaison shall be a member of senior management at Joplin with responsibility for clinical operations at the nursing home and shall be a member of the Quality Assurance Compliance Committee. The Q/A Compliance Liaison shall perform his or her functions in conjunction with the NHC Corporate Compliance Officer's overall responsibility for compliance at Joplin. The Q/A Compliance Liaison shall make regular (at least quarterly) reports to the NHC Corporate Compliance Officer regarding quality of care matters at Joplin. In the event a new Q/A Compliance Liaison is appointed during the term of this CIA, Joplin shall notify the OIG

in writing within 15 days of such a change.

2. *Quality Assurance Compliance Committee.* To the extent not already established, Joplin shall establish a Quality Assurance Compliance Committee (“Q/A Committee”) within 90 days of the effective date of this CIA. The purpose of this Q/A Committee shall be to address issues concerning quality of care at Joplin. At a minimum, the Committee shall include the NHC Corporate Compliance Officer, the Q/A Compliance Liaison, the Chief Medical Officer, and the senior executives responsible for clinical operations for the nursing home, and any other appropriate officers or individuals necessary to thoroughly implement the requirements of this CIA that relate to quality of care in the nursing facility.

3. *Internal Audit and Review Functions.* To the extent not already accomplished, within 90 days of the effective date of this CIA, Joplin shall create a program for performing internal audits and reviews. The internal audits and reviews shall:

- a. make findings of whether the patients and residents at Joplin 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 483 and any other Federal and state statutes, regulations, and directives;
- b. make findings of whether the policies and procedures mandated by this CIA are created, implemented, and enforced;
- c. make findings of whether training is performed in accordance with this CIA;
- d. make findings of whether the reporting obligations are complied with in accordance with this CIA; and
- e. make findings of whether corrective action plans are timely created, implemented, and enforced.

B. Policies and Procedures.

To the extent not already accomplished, within 90 days of the effective date

of this CIA, Joplin shall develop and initiate implementation of written Policies and Procedures regarding quality of care in the Joplin facility. At a minimum, Joplin's Policies and Procedures shall specifically address:

- a. Measures designed to ensure that Joplin fully complies with Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and all regulations, directives, and guidelines promulgated pursuant to these statutes, including, but not limited to, 42 C.F.R. Parts 424 and 483, and any other state or local statutes, regulations, directives, or guidelines that address quality of care in nursing homes;
- b. Measures designed to ensure that Joplin complies with all requirements applicable to Medicare's Prospective Payment System ("PPS") for skilled nursing 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;
- c. Measures designed to ensure the coordinated interdisciplinary approach to providing care to nursing home residents, including, but not limited to, resident assessment and care planning; nutrition; diabetes care; wound care; infection control; abuse and neglect policies and reporting procedures; protection from harm 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 resident competence to make treatment decisions;
- d. Measures designed to ensure that Joplin provides appropriate wound care (decubitus ulcer) treatment and appropriate nutrition for residents with wounds;
- e. Measures designed to ensure that all residents' ideal body weight is accurately calculated, their current body weight is compared to the residents' usual body weight in order to

determine an appropriate healthy weight range for each resident on a regular and consistent basis and such findings are clearly documented in the residents' charts;

- f. Measures designed to ensure that Joplin identifies and provides timely clinical responses to all “nutritionally at risk” and “nutritionally compromised” residents at the earliest possible time;
- g. Measures designed to ensure that Joplin provides a safe and functional environment for all residents and that all residents are free from mistreatment, verbal, sexual, physical, and mental abuse, corporal punishment, involuntary seclusion, neglect, and misappropriation of property;
- h. Measures designed to ensure that Joplin adequately supervises, monitors and safeguards all residents;
- i. Measures designed to ensure that staff members provide residents with appropriate basic care services that meet the residents' individual needs;
- j. Measures designed to ensure that all residents are positioned properly, receive proper oral care and are bathed as scheduled, in appropriate water temperatures and with sufficient frequency;
- k. Measures designed to ensure that Joplin provides an ongoing structured program of activities designed to meet the individual interests and physical, mental, and psychosocial well-being of each resident, and provides medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;
- l. Measures designed to ensure that physical and chemical restraints are used only pursuant to accepted professional standards when less restrictive alternatives are not effective and that they are never used as punishment or for the convenience of staff;

- m. Measures designed to ensure that residents receive adequate preventive, chronic, routine, acute, follow-up, and emergency medical care in accordance with generally accepted standards of care, and that residents receive the necessary health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. Such measures shall recognize that residents' attending physicians are not employed by or under contract with Joplin, and that residents have the right to choose their own physicians. The measure shall be designed to ensure with the intervention of Joplin's Medical Director, where necessary and appropriate, that:
  - i. All laboratory and test results are promptly transmitted to physicians, and that the physician's response is documented in the residents' charts and that appropriate action is taken to address any abnormal results;
  - ii. Physicians complete notes in the residents' charts on a timely basis, at least monthly for the first 90 days and at least once every 60 days thereafter, provided that after the initial visit the physician and the physician's assistant, nurse practitioner, or clinical nurse specialist may alternate visits, and the professional making the visit shall be responsible for timely documentation of the visit;
  - iii. Physicians address promptly residents' significant or undesirable weight loss and provide ongoing follow-up until the situation is adequately addressed;
  - iv. As indicated by accepted professional standards of care, in the event of a medical emergency involving a resident, facility staff will immediately call an ambulance, and will initiate appropriate emergency interventions while awaiting arrival of the ambulance prior to transport of the resident to the closest tertiary care facility;

- v. Physicians participate in the comprehensive assessment of all residents' needs;
  - vi. Physicians determine what specialized medical services are required for the residents and ensure that such services are timely provided whenever necessary to evaluate or treat the resident's medical problems;
  - vii. A comprehensive plan of care for each resident exists;
  - viii. Each resident's medical status and progress in response to the resident's medical plan of care is regularly and adequately reviewed and all changes appropriately documented;
  - ix. Adequate and appropriate interdisciplinary communication among relevant professionals, especially between and among physicians and nurses; and
  - x. Drug regimens of each resident are reviewed monthly and irregularities are reported in writing to the resident's physician.
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- n. Measures designed to ensure that residents receive adequate and appropriate nursing care, and that nurses perform their responsibilities in keeping with accepted professional standards of care by adequately identifying health care problems, notifying physicians of health care problems, monitoring and intervening to ameliorate such problems, and keeping appropriate records of residents' health care status;
  - o. Measures designed to ensure that discharges are made without regard to the financial implications of the residents' participation in Federal health care programs;
  - p. Measures designed to ensure that staffing needs decisions are based on the needs of the patients or residents at the facility and not upon financial concerns;

- q. Measures that specify that if the director of nursing (or other person who is making staffing decisions at the facility) disagrees with a staffing determination that affects patient care made by the Administrator or other individuals at the district, region, or corporate level, then that person must immediately report through the Confidential Disclosure Program and the Monitor;
- r. Measures designed to minimize the number of individuals working at any Joplin facility who are not employees of NHC , but who are “agency” staff, and measures designed to track the number of individuals at Joplin who are agency staff so that the number/proportion of or changes trends in such staff can be adequately identified by Joplin and/or the Monitor.
- s. Measures designed to ensure that clinical assessments are made without regard to the reimbursement amount;
- t. Measures designed to ensure that all residents are served in the least restrictive environment and most integrated setting appropriate to their needs;
- u. Disciplinary guidelines and methods for employees to make disclosures or otherwise report on compliance issues through the Confidential Disclosure Program required by section III.E;
- v. Measures designed to promote adherence to the compliance and quality of care standards set forth in the applicable statutes, regulations, and in this CIA, by including such adherence as a significant factor in determining the compensation to Administrators of the facility, and the individuals responsible for such compliance at the district, regional, and corporate level;
- w. Measures designed to ensure cooperation by Joplin, NHC and its employees, contractors, and agents with the Monitor in the performance of his or her duties as set forth *infra*; and
- x. 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, hospital 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, Joplin assesses the nature and scope of the problems, implements appropriate corrective action plans, and monitors compliance with such plans. Such measures shall include the requirement that the NHC Corporate Compliance Officer review each CMS and state survey agency report and plan of correction and certify in writing to the appropriate government agency as to whether Joplin has corrected the survey deficiencies noted and has achieved substantial compliance with the Medicare and Medicaid conditions of participation.

Joplin shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. A summary of the Policies and Procedures will be provided to OIG in the Implementation Report. The Policies and Procedures will be available to OIG upon request.

Within 90 days of the effective date of the CIA, the relevant portions of the Policies and Procedures shall be made available to all appropriate Covered Persons. Compliance staff or supervisors shall be available to explain any and all policies and procedures.

C. Training and Education.

1. *Specialized Clinical Training.* Within 90 days of the effective date of this CIA, each Covered Person shall receive at least 3 hours of training. This training shall include a discussion of the policies and procedures set forth in Section III.B, including, but not limited to:

- a. policies, procedures, and other requirements applicable to the documentation of medical records;
- b. the coordinated interdisciplinary approach to providing care to residents, including, but not limited to, resident assessment and care planning; nutrition; diabetes care; 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; ADL care; therapy services; quality of life, including accommodation of needs and activities; and assessment of the resident's competence to make treatment decisions.

New Covered Persons shall receive this training within 30 days of the beginning of their employment or contract or within 90 days of the effective date of this CIA, whichever is later. If a new Covered Person has any responsibility for the delivery of patient or resident care, then prior to completing this specialized training, a Joplin Covered Person who has completed the substantive training shall review all of the untrained person's work.

After the first year of the CIA, every Covered Person shall receive 2 hours of such specialized training on an annual basis.

In addition, each facility shall conduct periodic training on an "as needed" basis (but at least annually) on those quality of care issues identified by the Q/A Committee. In determining what training should be performed, the Q/A Committee will review 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 provided to all Covered Persons.

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

2. *Certification.* Each Covered Person shall certify, in writing, that he or she has attended the required training. The certification shall specify the type of training received and the date received. The Compliance Officer shall retain the certifications or a copy of the certifications, along with specific course materials. These shall be made available to OIG upon request.

3. The specialized clinical training and the review by the Monitor of such training shall not be required to cover any issues already being provided or reviewed under the NHC CIA, including without limitation, training and monitoring to assure that Joplin is appropriately and accurately using the Resource Utilization Groups ("RUG") classification system.

D. Review Procedures.

Within 60 days of execution of this CIA, Joplin will engage a qualified person or entity, (such engagement to be effectuated by letter that meets with the approval of the OIG), to monitor Joplin's implementation of the CIA (hereinafter referred to as the "Monitor"). The Monitor's selection shall be made in consultation with the OIG and the OIG shall have final approval authority over the selection of the Monitor. The Monitor may retain additional personnel, including, but not limited to, independent consultants, if needed to help meet the Monitor's obligations under this CIA.

1. The Monitor shall be responsible for assessing the effectiveness, reliability and thoroughness of the following:
  - a. Joplin's 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. Joplin's response to quality of care issues, which shall include an assessment of:
    - (i). Joplin's ability to identify the problem;
    - (ii). Joplin's ability to determine the scope of the problem, including, but not limited to, whether the problem is isolated or systemic;
    - (iii). Joplin's ability to create a corrective action plan to respond to the problem;
    - (iv). Joplin's ability to execute the corrective action plan;
    - (v). Joplin's ability to evaluate whether the assessment, corrective action plan and execution of that plan were effective, reliable, and thorough; and
    - (vi). Joplin's development and implementation of corrective action

plans and the timeliness of such actions.

- c. Joplin's proactive steps to ensure that each patient and resident receives care in accordance with: (1) basic care, treatment and protection from harm standards; (2) the 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 Joplin and set forth in this CIA.

2. The Monitor shall have:

- a. immediate access to facility, at any time and without prior notice, to assess compliance with this CIA, to assess the effectiveness of the internal quality assurance mechanisms, and to ensure that the data being generated is accurate;
- b. immediate access to: (1) the CHSRA quality indicators; (2) internal or external surveys or reports; (3) hotline complaints; (4) resident satisfaction surveys; (5) staffing data in the format requested by the Monitor, including reports of the facility where more than 10 percent of the staff are hired on a temporary basis; (6) reports of abuse, neglect, or an incident that required hospitalization or emergency room treatment; (7) reports of any incident involving a patient or resident that prompts a full internal investigation; (8) patient or resident records; (9) documents in the possession or control of any quality assurance committee, peer review committee, medical review committee, or other such committee; and (10) any other data in the format the Monitor reasonably determines relevant to fulfilling the duties required under this CIA; and
- c. immediate access to residents and staff for interviews outside the presence of Joplin supervisory staff or counsel, provided such interviews are conducted in accordance with all applicable laws and the rights of such individuals. The Monitor shall give full consideration to an individual's clinical condition before interviewing a resident.

3. Joplin shall:

- a. ensure the Monitor's immediate access to the facility, individuals, and

documents Joplin is required to maintain pursuant to this CIA and/or as a participant in the Federal health care programs, and assist in obtaining full cooperation by its current Covered Persons;

- b. provide the Monitor a report within 48 hours regarding any of the following occurrences:
  - (i). Deaths or injuries related to use of restraints;
  - (ii). Deaths or injuries related to use of psychotropic medications;
  - (iii). Suicides;
  - (iv). Deaths or injuries related to abuse or neglect (as defined in Missouri law);
  - (v). Fires, storm damage, flooding, major equipment failures at the facility that adversely affect patient care; and
  - (vi). Manmade disasters that pose a threat to residents (*e.g.*, toxic waste spills).

Each such report shall contain the full name, social security number, 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.

- c. assist in locating and, if requested, obtaining cooperation from past employees, contractors, agents, and residents, their families and Joplin;
  - d. provide access to current residents, their families, and Joplin; and
  - e. provide to its Quality Assurance Compliance Committee and NHC Corporate Compliance Officer copies of all documents and reports provided to the Monitor.
- 4. The Monitor shall respect the legal rights, privacy, and dignity of all residents, patients, and employees.
  - 5. It is the intent of the parties to this CIA that the Monitor, Joplin and NHC

work cooperatively together to assure compliance with this CIA and to improve the quality of care at Joplin.

6. In performing the functions as set forth herein, the Monitor shall seek to work collaboratively with Joplin and consult with designated Joplin representatives and independent physicians and other health care professionals, where appropriate. In connection with each review, the Monitor shall advise Joplin orally, except if inappropriate, and in writing, if appropriate, concerning the status of its compliance efforts, any steps that he or she believes Joplin should take to enhance its performance, and whether Joplin's performance is satisfactory.
7. The Monitor shall charge a usual and customary rate for his or her fees and expenses. Joplin shall be responsible for all costs reasonably incurred by the Monitor relating directly to this matter, including, but not limited to, travel expenses, consultants, administrative and other personnel, office supplies and equipment. Joplin shall pay the Monitor within 20 calendar days of submission of his or her invoices. Joplin shall have the right to audit the Monitor's invoices and to present to the OIG any challenge to the appropriateness of expenses incurred. In the event that the OIG agrees with Joplin as to the challenged amount, Joplin shall be entitled to a refund of the amount at issue from the Monitor. Such refund shall be paid by the Monitor within 20 calendar days of notification by the OIG as to its decision.
8. The Monitor shall visit Joplin approximately once every three months until the CIA is terminated or at more or less frequent intervals at the option of the Monitor, depending upon Joplin's performance under this CIA and depending upon the Monitor's needs in performing his or her functions under the CIA. These visits may be made with or without prior notice to Joplin, at the Monitor's discretion. In the event that the OIG determines that Joplin has made satisfactory progress in implementing the CIA, the OIG may in its sole discretion reduce the frequency of the Monitor's visits to once a year.
9. Joplin shall have the right to present its position to the OIG with respect to any reports issued by the Monitor. The OIG, the Monitor and Joplin shall meet at least semi-annually, and more often, if appropriate, to discuss the status of Joplin's compliance with the terms of this CIA. Except as otherwise provided herein, the Monitor may confer and correspond with Joplin and the OIG on an *ex parte* basis.

10. The Monitor shall submit reports within 48 hours (or earlier if necessary to protect the health and safety of a patient or resident or otherwise mandated by law) to OIG, Joplin, the state survey agency,<sup>1</sup> and any other appropriate regulatory or law enforcement entity, any time he or she has concerns regarding the health or safety of the residents or patients and such concerns create an obligation to report under Federal, state, or local law or professional licensing standards.
11. The Monitor must promptly report to appropriate regulatory or law enforcement entities when warranted.
12. The Monitor shall provide quarterly reports to Joplin and OIG concerning the findings made to date.
13. The Monitor shall submit to OIG and Joplin an annual report representing an accounting of its costs throughout the year.
14. The Monitor is not bound by any other agency's findings or conclusions, including, but not limited to, JCAHO, CMS, or the state survey agency. 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 Joplin, and Joplin 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 Joplin from using any material generated by the Monitor, or any opinions, testimony, or conclusions from the Monitor in any action under the CIA or pursuant to other OIG authorities.
15. If the Monitor has concerns about corrective action plans that are not being enforced or systemic problems that could affect Joplin's ability to render quality care to its patients and residents, then the Monitor shall: 1) report such concerns in writing to an interagency Consortium consisting of representatives of OIG, CMS, the Department of Justice, and the state survey agency; and 2) provide notice and a copy of the report to the Administrator of Joplin, the NHC Regional Office, and the NHC Corporate Compliance Officer.

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<sup>1</sup>As defined in 42 CFR § 488.1 (2000).

16. If the Monitor resigns or if the OIG approves of the removal of the Monitor for any reason prior to the termination of the CIA, Joplin shall, after consultation with and receiving approval from the OIG, engage another Monitor with the same functions and authorities as set forth herein.
17. The Monitor shall abide by all legal requirements applicable to information from Joplin that the Monitor receives or has access to by virtue of this CIA, including, without limitation, the obligation to (1) maintain the confidentiality of each resident's personal and clinical records; and (2) maintain the confidential and not to disclose the records of the Quality Assurance Committees of Joplin. Nothing in this prior sentence, however, limit or affect the Monitor's obligations under applicable law to provide information, including information from resident clinical records, to the OIG, and, when legally required, reporting to other governmental agencies.

E. Disclosure Program.

For the duration of this CIA, Joplin shall continue to be subject to and to utilize the Confidential Disclosure Program required by the NHC CIA, the requirements of which are set forth in the NHC CIA. Within 30 days of the effective date of the CIA, Joplin shall add a specific reference to quality of care issues to the Confidential Disclosure Program notices and documents as available and displayed at Joplin and Joplin shall keep such addendums in place for the duration of the CIA.

**IV. IMPLEMENTATION AND ANNUAL REPORTS**

A. Implementation Report. Within 120 days after the effective date of this CIA, Joplin 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 individuals in positions described in section III.A;
2. the program for internal audits and reviews required in section III.A;
3. the summary of the Policies and Procedures required by section III.B.;
4. a description of the training program 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:
  - a. the Policies and Procedures required by section III.B have been developed, are being implemented, and have been made available to all pertinent Covered Persons; and
  - b. all Covered Persons have completed the training and executed the certification required by section III.C.
6. a copy of the Disclosure Program notice required by section III.E;

B. Annual Reports. Joplin shall submit to OIG an Annual Report with respect to the status and findings of Joplin's compliance activities over the one year period covered by the Annual Report. Each Annual Reports shall include:

1. any change in the identity or position description of individuals in positions described in section III.A, a change in any of the committee's structure or charter, or any change in the internal audit and review program;
2. a certification by the Compliance Officer that:
  - a. all Covered Persons have completed the training and executed the certification required by section III.C; and
  - b. Joplin has effectively implemented all plans of correction related to problems identified under this CIA, Joplin's Compliance Program, or internal audits.
3. notification 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 summary of the findings of any audit or review, and a summary of the corrective action taken under the program for internal audits and reviews;
5. Joplin's response/corrective action plan to any issues raised by the Monitor;
6. a copy of any disclosure log entries maintained as part of the NHC Disclosure Program that relate to quality of care at Joplin (excluding any calls that relate solely to human resources issues);

The first Annual Report shall be received by the OIG no later than one year and 60 days after the effective date of this CIA. Subsequent Annual Reports shall be submitted no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by Joplin's Administrator that, except as otherwise described in the applicable report: (1) Joplin is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; and (2) the Administrator 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 resolution (or its equivalent) from Joplin's Board of Directors certifying that it has reviewed the Annual Report and agrees with the statements made therein.

V. 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

Joplin: Administrator  
NHC Healthcare - Joplin  
2700 East 34<sup>th</sup> Street  
P.O. Box 2877  
Joplin, MO 64803

cc: Melvin Rector  
Vice President  
National Healthcare  
39 Sugar Maple Lane  
St. Charles, MO 63303

NHC: Carol Ann Hempfner, Corporate Compliance Officer  
NHC  
100 E. Vine Street, Suite 800  
Murfreesboro, TN 37130  
Phone: 615-890-2020  
Fax: 615-890-0123

## **VI. 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 and photocopy Joplin's books, records, and other documents and supporting materials and/or conduct an onsite review of Joplin's operations for the purpose of verifying and evaluating: (a) Joplin's compliance with the terms of this CIA; and (b) Joplin's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Joplin 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 Joplin's employees, contractors, or agents who consent to be interviewed at the individuals's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee, contractor, or agent and OIG. Joplin agrees to assist OIG in contacting and arranging interviews with such employees, contractors, or agents upon OIG's request. Joplin's employees, and the contractors and agents may elect to be interviewed with or without a representative of Joplin present.

## **VII. DOCUMENT AND RECORD RETENTION**

Joplin shall maintain for inspection all documents and records relating to compliance with this CIA for six years (or longer if otherwise required by law).

## **VIII. 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 Joplin prior to any release by OIG of information submitted by Joplin pursuant to its obligations under this CIA and identified upon submission by Joplin as trade secrets, commercial or financial information and privileged and confidential under the FOIA rules. Joplin 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 a waiver by NHC or Joplin any attorney-client, work product, peer review, quality assessment and assurance committee review, or other applicable privileges, including, without limitation, the protections contained in 42 C.F.R. § 473.75(o) and applicable state law. Notwithstanding that fact, the existence of any such privilege does not affect Joplin's obligations to comply with the provisions of this CIA.

## **IX. BREACH AND DEFAULT PROVISIONS**

Joplin 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. Specific Performance of CIA Provisions. If OIG determines that Joplin is failing to comply with a provision or provisions of this CIA and decides to seek specific performance of any of these provisions, OIG shall provide Joplin with prompt written notification of such determination ("Noncompliance Notice"). Joplin will have 30 days from the date of receipt of the Noncompliance Notice within which to either: (1) cure the alleged failure to comply; (2) demonstrate that to the OIG's satisfaction that the alleged breach for which the OIG seeks specific performance cannot be cured within the 30 day period, but that: (i) Joplin has begun to take action to cure the failure to comply; (ii) Joplin is pursuing such action with due diligence; and (iii) Joplin has provided to OIG a reasonable timetable for curing the alleged breach for which the OIG seeks specific performance; or (3) to reply in writing that Joplin disagrees with the determination of noncompliance and request a hearing before an HHS Administrative Law Judge ("ALJ"), pursuant to the provisions set forth in section IX.E of this CIA. The purpose of the hearing is to determine whether Joplin has failed to comply with the CIA and whether Joplin shall be required to implement the particular provisions at issue.

B. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Joplin and OIG agree that failure to comply with certain obligations

set forth in this CIA may lead to the imposition of the following monetary penalties (“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 120 days after the effective date of this CIA and concluding at the end of the term of this CIA, Joplin fails to have in place any of the following:

- a. a Compliance Officer and Q/A Compliance Liaison;
- b. a Q/A Committee;
- c. a program for performing internal audits and reviews;
- d. written Policies and Procedures;
- e. a requirement that Covered Persons be trained; and
- f. a Disclosure Program.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Joplin fails meet any of the deadlines to submit the Implementation Report or the Annual Reports to the OIG.

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

4. A Stipulated Penalty of \$3,000 (which shall begin to accrue 10 days after the date OIG provides notice to Joplin of the failure to comply) for each day Joplin fails to comply fully and adequately with an obligation of this CIA that is widespread or systemic in nature or reflective of a pattern or practice. In its notice to Joplin, the OIG shall state the specific grounds for its determination that the Joplin has failed to comply fully and adequately with the CIA obligation(s) at issue. A Stipulated Penalty as described in this paragraph shall not be demanded for any violation for which the OIG has sought a Stipulated Penalty under paragraphs 1- 3 or 5 of this section

5. A Stipulated Penalty of \$1,000 (which shall begin to accrue 10 days after the date OIG provides notice to Joplin of the failure to comply) for each day Joplin fails to comply fully and adequately with any obligation of this CIA. In its notice to Joplin, the OIG shall state the specific grounds for its determination that Joplin has failed to comply fully and adequately with the CIA obligation(s) at issue. A Stipulated Penalty as described in this paragraph shall not be demanded for any violation for which the OIG has sought a Stipulated Penalty under paragraphs 1-4 of this section. With respect to the Stipulated Penalty provision described in this Section IX(B)(6) only, the OIG shall not seek a Stipulated Penalty if Joplin demonstrates to the OIG’s satisfaction that the alleged failure

to comply could not be cured within the 10 day period, but that: (i) Joplin has begun to take action to cure the failure to comply; (ii) Joplin is pursuing such action with due diligence; and (iii) Joplin has provided to OIG a reasonable timetable for curing the alleged breach for which the OIG seeks the Stipulated Penalty.

C. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Joplin has failed to comply with any of the obligations described in section IX.B and determining that Stipulated Penalties are appropriate, OIG shall notify Joplin by personal service or certified mail of: (a) Joplin'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 days of the date of receipt of the Demand Letter, Joplin shall either: (a) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; 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 IX.E. In the event Joplin elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Joplin 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 IX.D.

2. *Timely Written Requests for Extensions.* Joplin may submit a timely written request 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 Joplin fails to meet the revised deadline as agreed to by the OIG-approved extension. 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 2 business days after Joplin receives OIG's written denial of such request or when the original obligation becomes due, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least 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 determination that Joplin has materially breached this CIA, which decision shall be made at the OIG's discretion and governed by the provisions in section IX.D, below.

D. Exclusion for Material Breach of this CIA

1. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by Joplin constitutes an independent basis for Joplin's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by OIG that Joplin has materially breached this CIA and that exclusion should be imposed, the OIG shall notify Joplin by certified mail of: (a) Joplin's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion ("Notice of Material Breach and Intent to Exclude").

2. *Opportunity to cure.* Joplin shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG's satisfaction that:

- a. Joplin is in full compliance with the obligations of the CIA cited by the OIG as being the basis for the material breach with this CIA;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30 day period, but that: (i) Joplin has begun to take action to cure the material breach; (ii) Joplin is pursuing such action with due diligence; and (iii) Joplin has provided to OIG a reasonable timetable for curing the material breach.

3. *Exclusion Letter.* If at the conclusion of the 30 day period, Joplin fails to satisfy the requirements of section IX.C.2, OIG may exclude Joplin from participation in the Federal health care programs. OIG will notify Joplin in writing of its determination to excluded Joplin ("Exclusion Letter"). Subject to the Dispute Resolution provisions in section IX.D, below, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The exclusion shall have national effect and will also apply to all other Federal procurement and non-procurement programs. If Joplin is excluded under the provisions of this CIA, Joplin 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 to meet an obligation under the CIA that has a material impact on the quality of care rendered to any residents or patients of Joplin;
- b. repeated or flagrant violations of the obligations under this CIA, including, but not limited to, the obligations addressed in section IX.B of this CIA;
- c. a failure to respond to a Demand letter concerning the payment of Stipulated Penalties in accordance with section IX.B above; or
- d. a failure to fund the Monitor in accordance with section III.D.

E. Dispute Resolution

1. *Review Rights.* Upon the OIG's delivery to Joplin of its Noncompliance Notice or Demand Letter or its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this CIA, Joplin 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 CIA. Specifically, an action for specific performance, a demand for payment of Stipulated Penalties, or an action for 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), a request for a hearing involving specific performance or Stipulated Penalties shall be made within 10 days of receipt of the date of the Demand Letter, and a request for a hearing involving exclusion shall be made within 25 days of the date of receipt of the Exclusion 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 CIA provisions shall be: (a) whether, at the time specified in the Noncompliance Notice, Joplin was in full and timely compliance with the obligations of this CIA for which the OIG seeks specific performance; (b) whether Joplin failed to cure; and (c) whether the obligations for which the OIG seeks specific performance could not be cured within the 35 day period, but that by the end of that period: (i) Joplin had begun to take action to cure the failure to comply; (ii) Joplin was and is pursuing such action with due diligence; and (iii) Joplin had provided to OIG a reasonable timetable for curing the alleged breach, which is being followed. Joplin 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, Joplin shall take the actions OIG



deems necessary to cure within 20 days after the ALJ issues such a decision notwithstanding that Joplin may request review of the ALJ decision by the DAB.

3. *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 Joplin was in full and timely compliance with the obligations of this CIA for which the OIG demands payment; and (b) the period of noncompliance; and (c) with respect to a Stipulated Penalty authorized under Section IX(B)(6), whether failure to comply could not be cured within the ten-day period, but that by the end of that period: (i) Joplin had begun to take action to cure the failure to comply; (ii) Joplin was and is pursuing such action with due diligence; and (iii) Joplin had provided to OIG a reasonable timetable for curing the alleged breach, which is being followed. Joplin 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 Joplin to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision notwithstanding that Joplin may request review of the ALJ decision by the DAB.

4. *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 Joplin was in material breach of this CIA; (b) whether such breach was continuing on the date of the Exclusion Letter; and (c) the alleged material breach cannot be cured within the 30 day period, but that (i) Joplin has begun to take action to cure the material breach, (ii) Joplin is pursuing such action with due diligence, and (iii) Joplin has provided to OIG 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. Joplin's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude Joplin 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 Joplin may request review of the ALJ decision by the DAB.

5. *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 CIA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this CIA and Joplin 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.

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

**XI. EFFECTIVE AND BINDING AGREEMENT**

A. This CIA shall be binding on the successors, assigns, and transferees of Joplin;

B. This CIA shall become final and binding on the date the final signature is obtained on the 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 Joplin signatory represents and warrants that he is 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.

Dec.11. 2001 3:45PM National HealthCare Corporation

No.8909 P. 2

**ON BEHALF OF NHC/OP L.P., NATIONAL HEALTHCARE CORPORATION, AND  
NATIONAL HEALTHCARE CORPORATION, D/B/A NHC HEALTHCARE, JOPLIN**

Richard F. LaRoche

Richard F. LaRoche  
General Counsel

12.11.01

DATE

Carol Ann Hempfner

Carol Ann Hempfner  
Compliance Officer

12/11/01

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

DATE

**ON BEHALF OF NHC/OP, L.P., NATIONAL HEALTHCARE CORPORATION AND  
NATIONAL HEALTHCARE CORPORATION, D/B/A NHC HEALTHCARE, JOPLIN**


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Richard F. LaRoche  
General Counsel

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DATE

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Carol Ann Hempfner  
Compliance Officer

\_\_\_\_\_  
DATE

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

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

12/12/11  
DATE