INSTITUTIONAL COMPLIANCE AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
THE UNIVERSITY OF CHICAGO AND THE UNIVERSITY OF CHICAGO HOSPITALS

I. PREAMBLE

The University of Chicago, solely on behalf of its unincorporated division The University of Chicago Physicians Group ("UCPG"), and The University of Chicago Hospitals ("UCH") hereby enter into this Institutional Compliance Agreement (the "Agreement") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure compliance with the reimbursement 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") as they relate to the submission of claims for professional services (such as physician services) rendered by Chicago's Employees and Residents to the extent provided for below.

For purposes of this Agreement, unless otherwise specified herein, the term "Chicago" shall mean UCPG and UCH, collectively. The term "Employee" shall mean: (i) all Chicago representatives responsible for generating, preparing and/or submitting requests for reimbursement from the Federal Health Care Programs for professional services, and (ii) all Chicago representatives for whose professional health care services (i.e., physicians, nurses, nurse practitioners, physicians' assistants, and technologists) Chicago requests reimbursement from the Federal Health Care Programs. The term "Residents" shall mean medical residents and interns of Chicago's medical residency and internship programs.

Additionally, this Agreement shall apply to any submissions by Chicago to the Federal Health Care Programs for professional services rendered by persons who are not Employees of Chicago. In addition to the obligations herein, Chicago shall (i) require that third parties Chicago may choose to engage as its billing agents comply with OIG's "Compliance Program Guidance for Third Party Medical Billing Companies" issued on November 11, 1998; (ii) ensure that such billing agents possess the requisite competence and undergo training comparable to the training required under this Agreement through either Chicago's training program or a training program of their own; and (iii) require that such billing agents submit to periodic audits (through the annual review process described in Section III.E below) by Chicago of the work such billing agents perform on behalf of Chicago. Chicago shall document its efforts to ensure the competency and training of such billing agents and shall make such documentation available to OIG upon reasonable request. Chicago shall provide such billing agents with a copy of Chicago's Code of Conduct, and shall ensure that such billing agents are made aware of the identity of Chicago's Chief Compliance Officer and of the existence of Chicago's confidential disclosure mechanism.

Prior to the execution of this Agreement, Chicago voluntarily established a compliance program in 1996 and formally adopted that program, also known as the "Healthcare Integrity Program," by Board of Trustees' resolution in 1998. That program provides for policies and procedures and, as represented by Chicago in this Agreement, is aimed at ensuring that its participation in the Federal Health Care Programs (which includes any requests for payments) is in conformity with the statutes, regulations and other directives applicable to the Federal Health Care Programs. Therefore, pursuant to this Agreement, Chicago hereby agrees to maintain in full operation the Healthcare Integrity Program as it relates to the submission of claims for professional services for the term of this Agreement. The Healthcare Integrity Program may be modified by Chicago as appropriate, but at a minimum, shall comply with the integrity obligations enumerated in this Agreement.

II. TERM OF THE AGREEMENT

The period of the integrity obligations assumed by Chicago under this Agreement shall be five (5) years from the effective date of this Agreement. The effective date of this Agreement shall be January 1, 2000.

III. INTEGRITY OBLIGATIONS

Pursuant to this Agreement, and for its duration, Chicago will make the following integrity obligations features of its Healthcare Integrity Program, which shall be established in accordance with the provisions below:

A. COMPLIANCE COMMITTEE

Chicago has represented to OIG that, pursuant to its Healthcare Integrity Program, it has created a compliance committee (known as the "Oversight Committee") to monitor Chicago's compliance activities. Pursuant to this Agreement, Chicago agrees to charge the Oversight Committee with responsibility for ensuring compliance with the integrity obligations in this Agreement. Accordingly, Chicago hereby agrees to maintain the Oversight Committee (or in the event that such a committee ceases to exist, to create a committee) with overall responsibility for the obligations in the Agreement. Chicago shall ensure that the Oversight Committee is continuously composed of representatives of multiple disciplines and segments of Chicago's operations. At a minimum, the Oversight Committee shall include or shall receive reports from the Chief Compliance Officer, the director of billing for UCPG, and a UCH representative. The Oversight Committee must be able to make reports directly to Chicago's Boards of Trustees. Any changes in the positions that comprise the Oversight Committee must be reported to OIG within thirty (30) days of the effective date of the action. Any other matters affecting the membership or responsibilities of the Oversight Committee shall be reported to OIG in accordance with Section V below.

B. COMPLIANCE OFFICER

Chicago has represented to OIG that, pursuant to its Healthcare Integrity Program, it has created a compliance officer position (known as the "Chief Compliance Officer") and it has appointed an individual to serve in that capacity. Accordingly, Chicago shall formally maintain the appointment of an individual to serve as the Chief Compliance Officer. At a minimum, the Chief Compliance Officer must continuously be charged with the responsibility for the day-to-day compliance activities in furtherance of the integrity obligations assumed herein, as well as for any reporting obligations established under this Agreement. The Chief Compliance Officer must have the authority and ability to report directly to Chicago's Boards of Trustees. Any changes in the appointment of the Chief Compliance Officer (including voluntary or involuntary personnel changes) or any actions or changes that would affect the Chief Compliance Officer's ability to perform the duties necessary to meet the obligations in this Agreement must be reported to OIG within thirty (30) days of the effective date of the action. Changes in the position, or material changes in the duties, of the Chief Compliance Officer shall be reported in accordance with Section V below.

C. WRITTEN STANDARDS

1. CODE OF CONDUCT. Chicago has represented to OIG that it developed and distributed to all Employees and Residents a Code of Conduct by which all such individuals are expected to abide in conjunction with the services they rendered to patients of the Federal Health Care Programs. Chicago shall maintain the Code of Conduct in effect for the duration of this Agreement. The Code of Conduct shall also be readily accessible to Employees and Residents. New Employees shall receive the Code of Conduct within thirty (30) days after the commencement of their employment. New Residents shall receive a copy of the Code of Conduct within thirty (30) days of the commencement of their training programs.

   Chicago shall maintain a written summary of the actions taken to distribute the Code of Conduct to all Employees and Residents. Such summaries shall be produced to OIG upon request. For purposes of this Agreement, OIG may request access to, or copies of, any underlying documents summarized by Chicago.

   Chicago will annually review the Code of Conduct and will make any necessary revisions. These revisions shall be distributed to all Employees within thirty (30) days of making such a change, unless the nature of the revision is such it that warrants earlier notice. Any amendments to the Code of Conduct must be reported to OIG in accordance with Section V below.

Chicago shall make adherence to the Code of Conduct an element in evaluating the performance of all Employees. At all times, the Code of Conduct shall, at a minimum, set forth:

a. Chicago's commitment to full compliance with all federal and state statutes and regulations applicable to the Federal Health Care Programs, including its commitment to prepare and submit accurate reimbursement claims consistent with the Federal Health Care Program statutes and regulations.

b. Chicago's requirement that all of its Employees and Residents comply with all federal and state statutes and regulations applicable to Federal Health Care Programs and with Chicago's own policies and procedures (including the requirements arising from this Agreement);

c. The requirement that Chicago Employees and Residents are expected to report through the Healthcare Integrity Program any suspected violations of any statute or regulation applicable to the Federal Health Care Programs or of Chicago's own policies and procedures;

d. The potential consequences to both Chicago and to any Employee or Resident as a result of any failure to comply with the applicable Federal Health Care Program requirements and/or with Chicago's own policies and procedures or any failure to report such non-compliance; and

e. The right of all Employees and Residents to use Chicago's confidential disclosure mechanisms, as well as Chicago's commitment to confidentiality and non-retaliation policy with respect to good faith disclosures.

2. POLICIES AND PROCEDURES. Within ninety (90) days of the effective date of this Agreement, Chicago shall develop and place into effect written policies and procedures regarding the operation of the Healthcare Integrity Program and Chicago's commitment to compliance with all Federal Health Care Program statutes, regulations, and program directives issued by the agency in charge of administering the program and its agents (including the Health Care Financing Administration, the Medicare Part B carrier, and the Illinois Department of Public Aid ("IDPA"). At a minimum, the policies and procedures shall specifically address: (1) the need for compliance in connection with all submissions for reimbursement for professional services; (2) the documentation requirements; and (3) a process for reasonable verification of compliance with these requirements.

In addition, the policies and procedures shall include disciplinary guidelines and methods for Employees and Residents to make disclosures or otherwise report on compliance issues to management and/or supervisors, including the Confidential Disclosure mechanisms required by Section III.F. Chicago shall assess and update the policies and procedures at least annually or more frequently, as appropriate. At a minimum, a summary of the policies and procedures will be provided to OIG in the Implementation Report, as provided in Section V.A. The policies and procedures will be available to OIG upon reasonable request.

Within one-hundred and twenty (120) days of the effective date of the Agreement, Chicago shall communicate to all Employees and Residents the policies and procedures promulgated pursuant to this Agreement. Chicago shall take reasonable and effective actions to ensure that these policies and procedures are communicated to Employees and Residents, and understood by them. Compliance staff or supervisors should be duly identified and made available to explain any and all policies and procedures.

D. TRAINING AND EDUCATION.

1. GENERAL INITIAL TRAINING. Within one-hundred and twenty (120) days of the effective date of this Agreement, Chicago shall provide general compliance training to its Employees and Residents. This general training shall explain Chicago's:

   a. Institutional Compliance Agreement requirements;

   b. Healthcare Integrity Program (including the policies and procedures established pursuant to Subsection C.2 above), except that OIG shall credit training conducted by Chicago under the Healthcare Integrity Program on or after January 1, 1999 to meet this obligation to the extent such training relates to the Healthcare Integrity Program.

   The training materials (including attendance logs) shall be maintained by Chicago and made available to OIG, upon reasonable request. New Employees shall receive the general training described above within forty-five (45) days of the beginning of their employment or within one-hundred and twenty (120) days after the effective date of this Agreement, whichever is later.

2. SPECIFIC INITIAL TRAINING. Within one-hundred and twenty (120) days of the effective date of this Agreement, Chicago shall provide each physician,

Resident, and representative responsible for generating, preparing and/or submitting requests for reimbursement from the Federal Health Care Programs for professional services with more intensive training, in addition to the general training required above. OIG shall credit training conducted by Chicago under the Healthcare Integrity Program on or after January 1, 1999 to meet this obligation, to the extent such training satisfies the requirements set forth below. This training shall include a discussion of:

a. The submission of accurate requests for reimbursement for services rendered to patients of the Federal Health Care Programs;

b. The policies, procedures and other requirements applicable to the documentation of medical records;

c. The personal obligation of each individual to ensure that the information documented by the individual, whether relating to actual patient care, the type of services or items delivered or the coding of such services or items is accurate and meets the federal and state requirements for the Federal Health Care Programs, as well as Chicago's policies;

d. Reimbursement rules and statutes applicable to Chicago's Federal Health Care Program business;

e. The legal sanctions for improper reimbursement submissions (including the submission of false or inaccurate information); and

f. Relevant examples of proper and improper billing practices.

These training materials shall be made available to OIG, upon request. Persons providing the training must be knowledgeable about the subject area.

Chicago shall provide new Employees with this training within forty-five (45) days of the beginning of their employment, or within one-hundred and twenty (120) days of the effective date of this Agreement, whichever is later. If a new Employee has any responsibility for the delivery of patient care, the preparation or submission of claims and/or the assignment of procedure codes prior to completing this specific training, a Chicago Employee who has completed the substantive training shall conduct sporadic reviews of the untrained person's work regarding the documentation of services and/or the assignment of billing codes until such time as the new Employee is duly trained.

Each year, for the term of this Agreement, every Employee shall receive training on the subjects enumerated in this subsection. The substance of the training and the identity of the individuals must be documented in accordance with Subsection D.3 below.

3. CERTIFICATION. Chicago shall maintain documents that reflect attendance at both general and specific training sessions by Employees and Residents, and the topics covered. Chicago may choose the exact format of these documents, but it is expected that the materials will include sheets with the signatures of the persons who attended or other reliable means (including electronic means) of verifying attendance and participation. The Chief Compliance Officer shall retain the attendance logs as well as the course materials. All of these documents shall be available to OIG upon reasonable request.

Chicago shall certify that such training has been provided in its implementation and Annual Reports to OIG, in accordance with Section V below. Information concerning the format, dates, and copies of the materials provided will be available, upon reasonable request, for review by OIG. For purposes of meeting the obligations under this Subsection D, for the term of the first Annual Report under this Agreement, OIG shall credit Chicago's training and education activities carried out pursuant to the Healthcare Integrity Program since January 1, 1999 to the extent such training satisfies the requirements set forth above.

E. ANNUAL REVIEWS OF BILLING POLICIES, PROCEDURES AND PRACTICES

1. ANNUAL REVIEWS. Chicago has developed a protocol, attached hereto as Attachment 1, for reviewing, on an annual basis, a sample of claims for professional services rendered by Employees of Chicago. An objective of the annual review is to verify compliance with the federal and state reimbursement requirements for the Federal Health Care Programs. Implementation of the agreed-upon procedures set forth in the protocol shall be an element of this Agreement.

For the yearly period ending December 31, 2000 and annually thereafter, Chicago shall contract with an independent entity (the "Annual Reviewer") with expertise in the reimbursement requirements of the Federal Health Care Programs to verify whether Chicago is implementing the agreed-upon procedures set forth in Attachment 1. The Annual Reviewer shall be required to issue a report concerning its work, including its findings, conclusions and recommendations.

If any of these annual reviews uncovers overpayments, Chicago shall notify the entity in charge of processing the claim or reimbursement (such

as the Medicare Part B carrier, IDPA or similar Federal Health Care Program payors) within sixty (60) days of verifying the overpayment and take remedial steps within ninety (90) days of verifying the overpayment (or such additional time as may be agreed to by the payor in writing) to correct the problem, including preventing the deficiency from recurring, calculate the amount of overpayment and make any appropriate refunds. The notice to the payor shall include: (i) a statement that the refund is being made pursuant to this Agreement; (ii) a statement describing Chicago's basis for the overpayment; (iii) the methodology by which the overpayment was determined; (iv) the amount of the overpayment; (v) any claim-specific information relating to the overpayments (e.g., beneficiary health insurance numbers, claim numbers, dates of service, amounts claimed, amounts paid and dates of payment); and (vi) the provider billing number under which the refund is being made.

If any annual review or monitoring reveals that there is a Material Billing Deficiency (as defined below), Chicago shall take reasonable steps to determine the extent of the problem, including the amount of any overpayments made by any Federal Health Care Program. To determine the amount of potential overpayment, Chicago shall conduct a special review, as set forth in Subsection E.2 below.

For purposes of this Agreement, a Material Billing Deficiency shall mean a substantial overpayment relating to any Federal Health Care Program resulting directly or indirectly from Chicago's conduct or policies that constitute violations of criminal, civil, or administrative laws applicable to any Federal Health Care Program. A Material Billing Deficiency may be the result of an isolated event or a series of occurrences.

Chicago shall notify OIG within sixty (60) days of verifying that a Material Billing Deficiency exists. Chicago's notice to OIG shall include: (i) a detailed description of the Material Billing Deficiency and the amount of any overpayment resulting therefrom; (ii) Chicago's actions and/or plans to correct the deficiency and prevent recurrences; (iii) the name of the third-party payor (e.g., Medicare Part B carrier) to whom any refunds relating to the matter have been or will be sent, its address and the names of representatives contacted, if any; (iv) the date of the check or electronic transfer and the identification number (or electronic transfer number) with which any refunds have been made; and (v) a report on the calculation of any overpayment amounts, as provided in Subsection E.2 below. To the extent Chicago has not completed its corrective actions and/or made any refund payments at the time of a notice pursuant to this subsection, it shall notify OIG in writing once such corrective actions are undertaken and/or any refunds are paid.

2. SPECIAL REVIEWS. In the event that a Material Billing Deficiency is identified, Chicago shall conduct a special review in accordance with the guidelines set forth in Attachment 2.

   a. REPORTING RESULTS. Upon completion of each special review, Chicago shall prepare a report reflecting adherence to the guidelines set forth in Attachment 2.

F. CONFIDENTIAL DISCLOSURE

Chicago has represented to OIG that it has established a confidential disclosure mechanism through its Compliance Resource Line, a toll-free telephone line, as a means to enable Employees, Residents and patients to report instances of noncompliance and/or make inquiries on compliance issues. Pursuant to this Agreement, Chicago shall maintain a confidential disclosure mechanism such as the Compliance Resource Line, which shall be available to all Employees, Residents and patients for the purpose of reporting or inquiring on matters of Chicago's compliance with Federal Health Care Program standards and the obligations in this Agreement.

In turn, Chicago shall require the internal inquiry of any specific disclosure or inquiry provided that such disclosure or inquiry is sufficiently specific so that it: (i) reasonably permits a determination of the appropriateness of the practice alleged to be implicated; and (ii) reasonably permits corrective action to be taken and ensure that proper follow-up is conducted. In an effort to address each disclosure and inquiry received, Chicago shall, in good faith, make a preliminary inquiry for every disclosure to ensure it has obtained all of the necessary information that is reasonably required to determine whether an internal inquiry, in accordance with the language above, should be conducted. Chicago shall maintain an internal tracking system to record all disclosures and inquiries received and all follow-up conducted. Chicago shall ensure that it provides sufficient notice of its disclosure mechanism to all Employees, Residents and patients.

Chicago shall include in each Annual Report to OIG a summary of the communications received under its confidential disclosure mechanism (including the number of disclosures received and the dates of such disclosures) concerning Chicago's practices reported as, and found to be, inappropriate. The reports shall also summarize the results of its internal inquiries and any follow-up activities on such matters. Chicago hereby agrees to maintain said reports in a manner consistent with Section VII of this Agreement.

Chicago shall select the manner in which disclosures and inquiries are received, processed and resolved. The disclosing or inquiring individual's identity may be requested, but shall not be required. Anonymity shall not be discouraged.

G. INELIGIBLE PERSONS

1. DEFINITION. For purposes of this Agreement, an "Ineligible Person" shall be any individual or entity who (i) is excluded, 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 and has not been reinstated in the Federal Health Care Programs after a period of exclusion, debarment, or ineligibility.

2. SCREENING REQUIREMENTS. Chicago shall not knowingly employ (either as a bona fide employee or as an independent contractor) any Ineligible Person for any position for which the Ineligible Person's salary or the items or services furnished, directed or prescribed by the Ineligible Person will be paid in whole or part, directly or indirectly, by a Federal Health Care Program. To prevent hiring or contracting with any Ineligible Person for such a position, Chicago shall screen all prospective Employees and prospective contractors prior to engaging their services for such a position, 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.dhhs.gov/progorg/oig*) (these lists and reports will hereinafter be referred to as the "Exclusion Lists").

3. REVIEW AND REMOVAL REQUIREMENT. Within one-hundred and twenty (120) days of the effective date of this Agreement, Chicago will review its list of current Employees and contractors against the Exclusion Lists. Thereafter, Chicago will review the list every six months. Chicago shall also impose upon each Employee a continuing obligation to inform Chicago immediately if the Employee becomes an Ineligible Person. If Chicago has notice that an Employee or contractor has become an Ineligible Person, Chicago will remove such person from responsibility for, or involvement with, Chicago's health care delivery operations that are paid in whole or in part, directly or indirectly, by a Federal Health Care Program and shall remove such person from any position for which the person's salary or the items or services furnished, directed, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal Health Care Programs at least until such time as the person is no longer an Ineligible Person.

4. PENDING CHARGES AND PROPOSED EXCLUSION. Chicago shall impose upon each Employee a continuing obligation to inform Chicago immediately if the Employee is charged with a criminal offense related to any Federal Health Care Program, or is proposed for exclusion. If

Chicago 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 with Chicago, Chicago shall take appropriate action to ensure that the person's responsibilities do not adversely affect the quality of care rendered to any patient, or the accuracy of any reimbursement claims submitted to the Federal Health Care Programs.

IV. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract or pursuant to this Agreement, OIG or its duly authorized representative(s) may, upon reasonable request as defined in 42 C.F.R. § 1001.1301, examine Chicago's books, records, and other documents and supporting materials for the purpose of verifying and evaluating: (i) Chicago's compliance with the terms of this Agreement; and (ii) Chicago's compliance with the requirements of the Federal Health Care Programs. The documentation described above shall be maintained and made available by Chicago at all reasonable times for inspection, review and reproduction by OIG. Chicago shall have the right to have one or more of its representatives (including legal counsel) present during such reviews. Furthermore, for purposes of this provision, OIG or its authorized representative(s) may, upon reasonable request and notice, interview any of Chicago's Employees and Residents who consent to be interviewed at the their 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. Such individuals shall have the right, at their option, to have a representative of Chicago present during interviews. Chicago agrees to assist OIG in contacting and arranging interviews with such Employees upon OIG's reasonable request. OIG's inspection and review activities pursuant to this section may include on-site visits.

V. IMPLEMENT AND ANNUAL REPORTS

A. IMPLEMENTATION REPORT

On or before July 1, 2000, Chicago shall submit a written report to OIG summarizing the status of its implementation of the requirements of this Agreement. This Implementation Report shall include:

1. The names and positions of the members of the Oversight Committee required by Section III.A.

2. The name, work address, and telephone number and position description of the Chief Compliance Officer required by Section III.B.

3. A copy of Chicago's Code of Conduct required by Section III.C.1.

4. A summary of the policies and procedures required by Section III.C.2 or a copy of the policies and procedures.

5. A description of the training programs required by Section III.D, including a description of the targeted audiences and a schedule of the dates on which the training sessions were held.

6. A certification by the Chief Compliance Officer that, to the best of the Chief Compliance Officer's knowledge and upon reasonable efforts and inquiry, the actions described in Sections III.C and III.D.1 of this Agreement have taken place.

7. A description of the confidential disclosure mechanisms required by Section III.F.

B. ANNUAL REPORT

Chicago shall make annual reports (each one of which is referred to throughout this Agreement as the "Annual Report") to OIG describing the measures Chicago has taken to ensure compliance with the terms of this Agreement. In accordance with the provisions above, the Annual Report shall include the following information:

1. In the first Annual Report, copies of the document or documents that comprise Chicago's Healthcare Integrity Program, as adopted by Chicago and implemented by the Oversight Committee and the Chief Compliance Officer. For subsequent years, Chicago shall note in the Annual Report any amendments or revisions to the Healthcare Integrity Program documents made during the period covered by the Annual Report.

2. Any change in the identity or position, or any material change in the duties, of the Chief Compliance Officer and/or the positions that comprise the Oversight Committee, as set forth in Sections III.A and III.B.

3. Copies of any revisions or amendments made to the Code of Conduct or the policies and procedures used or followed in the generation of claims submitted to the Federal Health Care Programs during the period covered by the Annual Report pursuant to Section III.C.

4. A description of the Training and Education activities engaged in pursuant to Section III.D of this Agreement and a summary of the activities undertaken to implement this program, including schedules, topic outlines of the training sessions, and lists of the participants organized by department or division. Additionally, Chicago shall include a certification by the Chief Compliance Officer that, to the best of the Chief Compliance

Officer's knowledge and, upon reasonable efforts and inquiry, the education and training activities required under this Agreement have taken place.

5. A summary of the findings made during the reviews conducted pursuant to Section III.E.1 of this Agreement relating to the year covered by the Annual Report; copies of any disclosures or notice documents prepared by Chicago pursuant to that section; a copy of the Annual Reviewer's report required under Section III.E.1; a copy of any special review reports described in Section III.E.2; and a description of the corrective steps and proof of refund to the pertinent payor (where applicable).

6. A summary of all Material Billing Deficiencies reported during the period of the Annual Report pursuant to III.E.

7. A summary of communications (including the number of disclosures by Employees and the dates of disclosure) received through the mechanisms established pursuant to Section III.F concerning Chicago's Federal Health Care business, as well as any follow up on such disclosures.

8. A summary describing any ongoing investigation, audit or legal proceeding conducted or brought by a governmental entity involving an allegation that Chicago has committed a crime or has engaged in fraudulent activities relating to health care delivery activities. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such an inquiry, legal proceeding or requests for information.

9. A description of any personnel actions (other than hiring) taken by Chicago as a result of the obligations in Section III.G. With respect to actions pursuant to Section III.G.4, provide a description of the responsibilities of the person affected by any such actions. Chicago shall maintain records concerning all such personnel actions and shall make such records available to OIG upon reasonable request.

The period covered by the Annual Report shall be twelve (12) months. The first Annual Report shall cover the period commencing on January 1, 2000 and ending on December 31, 2000 and shall be due on March 1, 2001. Subsequent Annual Reports shall be due on March 1 after the end of the applicable period.

C. CERTIFICATIONS

The Implementation Report and Annual Reports shall include a certification by the Chief Compliance Officer that: (1) to the best of the Chief Compliance Officer's belief and upon reasonable inquiry, Chicago is in compliance with all of

the requirements of this Agreement; and (2) the Chief Compliance Officer has reviewed the Annual Report and has made a reasonable inquiry regarding its content and believes that, upon such an inquiry, the information is accurate and truthful.

D. REPORTS TO IDPA

Contemporaneous to its submissions to OIG, Chicago shall submit copies of the Implementation Report and each Annual Report required by this Agreement to IDPA at Office of Inspector General, Illinois Department of Public Aid, 404 North 5th, Springfield IL 62702. This subsection shall not be construed so as to grant IDPA or any other state agency or state government any rights under this Agreement.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

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

ATTENTION: Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Cohen Building, Room 5527
Washington, DC 20201
Ph. 202.619.2078
Fax 202.205.0604

ATTENTION: General Counsel
University of Chicago
5801 South Ellis Avenue, Suite 503
Chicago, IL 60637

General Counsel
Room G108, MC 1132
University of Chicago Hospitals
5841 South Maryland Avenue
Chicago, IL 60637

VII. DOCUMENT AND RECORD RETENTION

Chicago shall maintain for inspection documents and records relating to its compliance with this Agreement, as well as those relating to the reimbursement claims submitted to

the Federal Health Care Programs, for a period of six (6) years following the execution of this Agreement or one (1) year longer than the duration of this Agreement.

VIII. BREACH AND DEFAULT

Chicago's compliance with the terms and conditions in this Agreement shall constitute an element of Chicago's present responsibility with regard to participation in the Federal Health Care Programs. Full and timely compliance by Chicago shall be expected throughout the duration of this Agreement with respect to all of the obligations herein agreed to by Chicago. As stated below in Section X of this Agreement, any and all modifications to this Agreement (including changes to dates on which an obligation is due to be met or a submission or response is due to be made) shall be requested in writing and agreed to by OIG in writing prior to the date on which the modification is expected to take effect.

A. STIPULATION PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN OBLIGATIONS

As a contractual remedy, Chicago and OIG hereby agree that failure to comply with certain obligations set forth in this Agreement may lead to the imposition of specific monetary penalties (hereinafter referred to as "stipulated penalties") in accordance with the following provisions.

1. A stipulated penalty of $2,500 for each day Chicago fails to comply with any of the following, which stipulated penalty shall begin to accrue one day after the date the obligation becomes due:

   a. Submission of the complete Annual Report, in accordance with the requirements in Section V.B, by the due date established in Section V.B;

   b. Confirmation of the existence of a Chief Compliance Officer in the Implementation Report as required under Section V.A;

   c. Confirmation of the existence of a Oversight Committee in the Implementation Report as required under Section V.A;

   d. Maintenance of a toll-free telephone line pursuant to Section III.F.

2. A stipulated penalty of $2,500 for each day Chicago fails to comply by having in force during the term of this Agreement any of the following,

which stipulated penalty shall begin to accrue on the date of receipt of OIG's notice of noncompliance or as otherwise indicated in OIG's notice, in accordance with Section V.B below:

a. the Healthcare Integrity Program adopted pursuant to Section III of this Agreement;

b. the Oversight Committee and the Chief Compliance Officer, discharging their respective duties, as required under Sections III.A and III.B of this Agreement;

c. the Training and Education activities required under Section III.F) of this Agreement;

d. the Confidential Disclosure requirements under Section III.F of this Agreement.

3. A stipulated penalty of $2,500 for each day Chicago fails to grant reasonable access to the information or documentation necessary to exercise OIG's inspection, audit and review rights set forth in Section IV of this Agreement, which stipulated penalty shall begin to accrue on the date Chicago fails to grant access.

4. A stipulated penalty of $1,500 (which shall begin to accrue on the date the failure to comply began) for each day Chicago:

a. employs or contracts with an Ineligible Person and that person: (i) has responsibility for, or involvement with, Chicago's health care delivery operations paid in whole or part, directly or indirectly, by the Federal Health Care Programs; or (ii) is in a position for which the person's salary or the items or services furnished, directed or prescribed by the person are paid in whole or part, directly or indirectly, by Federal Health Care Programs; this stipulated penalty shall not be demanded for any time period during which Chicago can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in Section III.G) as to the status of the person; or

b. employs or contracts with a person who Chicago has notice: (i) has been charged with a criminal offense related to any Federal Health Care Program; or (ii) is proposed for exclusion, and that person has responsibility for, or involvement with Chicago's health care delivery operations paid in whole or in part, directly or indirectly, by the Federal Health Care Programs; this stipulated penalty shall

not be demanded for any time period before ten (10) days after Chicago received notice of the relevant matter or after the resolution of the matter.

5. A stipulated penalty of $1,000 for each day Chicago fails to comply with any other requirement in this Agreement, which is not covered by provisions 1, 2, 3 and 4 of this Section VIII.A of this Agreement, which stipulated penalty shall begin to accrue one day after the date of OIG's notice of noncompliance in accordance with Section VIII.B.

B. PAYMENT OF STIPULATED PENALTIES

Upon finding that Chicago has failed to comply with any of the above-enumerated obligations, OIG may choose to demand payment of the stipulated penalties above. To effectuate the demand, OIG shall notify Chicago via certified mail through a writing that describes with particularity: (i) Chicago's failure to comply; and (ii) OIG's exercise of its contractual right to demand payment of the stipulated penalties payable under this Agreement. This notification is hereinafter referred to as the "Demand Letter."

Within fifteen (15) days of receipt of the Demand Letter, Chicago shall respond by either: (i) curing the breach to OIG's satisfaction, paying the applicable stipulated penalties and notifying OIG of its corrective actions; or (ii) sending in writing to OIG a request for a hearing before an HHS administrative law judge to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth in Section VIII.D of this Agreement. Chicago's election of the contractual right herein to seek review of OIG's noncompliance determination shall not preclude Chicago from also choosing to pay the applicable stipulated penalties at any time after receiving the Demand Letter. Failure to respond to the Demand Letter shall be considered a material breach of this Agreement and shall be grounds for exclusion under Section VIII.C below.

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 of this Agreement.

C. REMEDIES FOR MATERIAL BREACH OF THIS AGREEMENT

If Chicago engages in conduct that OIG reasonably considers to be a Material Breach (as defined below) of this Agreement, OIG may seek the exclusion of the University of Chicago ("U of C") and/or UCH, as appropriate, from participation in the Federal Health Care Programs. Upon making its determination, OIG shall notify U of C and/or UCH of the alleged Material Breach by certified mail and of its intent to exclude as a result thereof. This letter shall be referred to hereinafter

as the "Notice of Material Breach and Intent to Exclude." U of C and/or UCH shall have thirty-five (35) days from the date of the letter to:

1. demonstrate to OIG's reasonable satisfaction that U of C and/or UCH is in full compliance with the provision of this Agreement that is alleged to be breached;

2. cure the alleged Material Breach set forth in the notice; or

3. demonstrate to OIG's satisfaction that the alleged Material Breach cannot reasonably be cured within the thirty-five (35) day period, but that U of C and/or UCH has begun to take action to cure the Material Breach and that it shall pursue such an action with due diligence. U of C and/or UCH shall, at this time, submit a timetable for curing the Material Breach for OIG's approval.

If at the conclusion of the thirty-five-day period (or other specific period as subsequently agreed to by OIG and U of C and/or UCH), U of C and/or UCH fails to act in accordance with provisions 1, 2 or 3 above, OIG may exclude U of C and/or UCH from participation in the Federal Health Care Programs. OIG shall notify U of C and/or UCH in writing of its determination to exclude U of C and/or UCH. This letter shall be referred to hereinafter as the "Exclusion Letter."

Notwithstanding any provisions in Chapter 42 of the Code of Federal Regulations, the exclusion pursuant to this Agreement shall take effect forty-five (45) days from the date of receipt of the Exclusion Letter unless U of C and/or UCH exercises its contractual right to seek review of OIG's exclusion determination by requesting a hearing before an administrative law judge as provided in Section VIII.D below. In the event U of C and/or UCH requests such a hearing, the exclusion shall not be effective until the issuance of an administrative law judge's decision and order supporting OIG's exclusion determination. The exclusion of U of C and/or UCH shall have national effect and will also apply to all other federal procurement and non-procurement programs. If U of C and/or UCH is excluded pursuant to this Agreement, it may seek reinstatement in accordance with 42 C.F.R. §§ 1001.3001-1001.3004.

For purposes of this section, a "Material Breach" shall mean: (i) a failure to report a discovered Material Billing Deficiency, take corrective action and pay the appropriate refunds, as provided in Section III.E of this Agreement; (ii) repeated or flagrant violations of the obligations under this Agreement, including, but not limited to, the obligations addressed in Section VIII.A of this Agreement; or (iii) failure to respond to a Demand Letter concerning the payment of stipulated penalties in accordance with Section VIII.B above.

U of C and/or UCH shall have the right to dispute OIG's determination to exclude U of C and/or UCH under this provision in accordance with the agreed-upon provisions set forth in Section VIII.D of this Agreement.

D. DISPUTE RESOLUTION

Upon OIG's delivery to Chicago of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligations in this Agreement, Chicago 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. § 1005 as if they applied to the stipulated penalties or exclusion sought pursuant to this Agreement. Specifically, OIG's determination to demand payment of stipulated penalties or to seek exclusion shall be subject to review by an HHS administrative law judge in a manner consistent with the provisions in 42 C.F.R. § § 1005.2-1005.21. With respect to disputes regarding OIG's determination to demand payment of stipulated penalties under this Agreement, Chicago and OIG agree that the administrative law judge's decision shall be considered final for purposes of this Agreement. With respect to OIG's determination to seek exclusion, Chicago and/or OIG may appeal the administrative law judge's decision to HHS's Departmental Appeals Board ("DAB") in a manner consistent with the provisions in the above-referenced regulations. For purposes of the parties' contractual remedies pertaining to exclusion, the decision of the DAB shall be considered final. Neither the review by the administrative law judge nor their review by the DAB provided for above shall be considered to be appeal rights arising under any statutes or regulations.

Notwithstanding the language in 42 C.F.R. § 1005.2(c), requests for hearings involving stipulated penalties shall be made within twenty (20) business days of the date of receipt of the Demand Letter and requests for hearings involving exclusion shall be made within twenty-five (25) days of the date of receipt of the Exclusion Letter.

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 section shall be: (i) whether, on the date of the Demand Letter, Chicago was in compliance with the obligations in this Agreement for which OIG demands payment; (ii) whether Chicago failed to cure; (iii) whether the alleged noncompliance could have been cured within the ten-day period or such other period as previously agreed to in writing between OIG and Chicago; and (iv) the period of noncompliance. For purposes of paying stipulated penalties under this Agreement, and if Chicago chooses to seek review in lieu of curing the breach and paying the stipulated penalties as set forth above, the administrative law judge's decision shall give rise to Chicago's obligation to pay. Thus, payment will be due fifteen (15) days from the day the administrative law judge's decision is mailed.

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 Agreement shall be: (i) whether Chicago was in Material Breach of one or more of its obligations under this Agreement; (ii) whether the alleged Material Breach was continuing on the date of the Exclusion Letter; and (iii) whether the alleged Material Breach could have been cured within the thirty-five-day period, or such other period as agreed to in writing between Chicago and OIG, whether Chicago began to take action to cure the Material Breach with due diligence, and whether Chicago provided OIG a timetable for curing the Material Breach. For purposes of the exclusion procedure herein agreed to, in the event of a Material Breach of this Agreement, an administrative law judge's decision finding in favor of OIG shall be deemed to make the exclusion effective, at which time OIG may proceed with its exclusion of Chicago.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, OIG shall have the burden of going forward and the burden of persuasion with respect to the issue of whether Chicago was out of compliance (for stipulated penalties) or in Material Breach (for exclusion) and with respect to the period of noncompliance or Material Breach. Chicago shall bear the burden of going forward and the burden of persuasion with respect to the issue of whether, as of the date of the Demand Letter or the Exclusion Letter, Chicago cured the alleged noncompliance or Material Breach, and with respect to the issue of whether the alleged noncompliance or Material Breach could have been cured during the specified period. The burden of persuasion will be judged by a preponderance of the evidence.

All notices required under any of the aforementioned proceedings shall be given to OIG and Chicago in accordance with Section VI of this Agreement.

IX. PRIVILEGES AND DISCLOSURES

Nothing in this Agreement, and no report or submission to OIG or IDPA pursuant to this Agreement, shall constitute or be construed as a waiver by Chicago of its attorney-client or any other privilege or immunity. Subject to HHS's Freedom of Information Act ("FOIA") procedures and definitions set forth in 45 C.F.R. Part 5, OIG shall notify Chicago prior to any release by OIG of information submitted by Chicago pursuant to its obligations under this Agreement and identified upon submission by Chicago as: (i) trade secrets; (ii) commercial or financial information that is privileged or confidential under applicable FOIA requirements; or (iii) otherwise not subject to FOIA. Chicago will make a good faith effort to designate as trade secrets, commercial or financial information that is privileged or confidential, or as otherwise not subject to FOIA, only materials that meet recognized criteria for exemption from disclosure under FOIA.

X. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the settlement agreement pursuant to which this Agreement is entered, and into which this Agreement is incorporated by reference, Chicago and OIG agree as follows:

1. This Agreement shall be binding on the successors, assigns and transferees of Chicago that assume responsibility for submitting claims to the Federal Health Care Programs for professional services rendered by physicians and other health care providers who, for purposes of providing such professional services, are employed by Chicago or who are independent contractors with Chicago. Chicago shall also require that any entity owned or controlled by Chicago that assumes responsibility for billing for professional services rendered by Chicago's physician faculty members comply with this Agreement.

2. This Agreement shall become final and binding only upon signing by each respective party hereto;

3. Any modifications to this Agreement may be made only by a writing signed by the parties to this Agreement; and

4. The undersigned Chicago signatories represent and warrant that they are authorized to execute this Agreement on behalf of Chicago. The undersigned OIG signatory represents that he is signing this Agreement in his official capacity and that he is authorized to execute this Agreement on behalf of OIG.

ON BEHALF OF THE UNIVERSITY OF CHICAGO

By: _____

1-7-00
DATE

Its: Vice President

ON BEHALF OF THE UNIVERSITY OF CHICAGO HOSPITALS

By: _____ 16 December 99

DATE

Its: Chief Executive Officer

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

J Morris

LEWIS MORRIS, ESQUIRE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

1/13/00
DATE

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